THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE[1]	
v.	OEA Matter No. 1601-0006-25
METROPOLITAN POLICE DEPARTMENT, Agency	Date of Issuance: December 18, 2025

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Police Officer for the Metropolitan Police Department ("Agency"). Agency issued its Notice of Proposed Indefinite Suspension Without Pay on July 9, 2024. The proposed notice charged Employee with (1) violation of General Order 120.21, Number 21, Attachment A, Number 7: "conviction of any member of the force in any court . . . of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of nolo contender, or is deemed to have been involved in the commission of any act which constitute a crime " and (2) violation of General Order 201.09, Section II (A)(1), and Mayor's Order 2023-131 Section III(D)(8), (12) and (14), and Section III(E). However, in its final notice,

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

Agency changed the first charge to violation of General Order 120.21, Attachment A, Number 6: "conduct described . . . is prohibited and shall serve as the basis for discipline: engaging in conduct that constitutes a crime." The second charge was unchanged.[2] According to Agency, on July 3, 2024, while on duty, Employee approached the driver's side door of Officer AL's car, reached inside the window, and grabbed Officer AL by her vest. Agency explained that Officer AL pushed Employee away and yelled, "Get off me!" Employee again reached inside and grabbed Officer AL by her vest and pulled her close to his face and opened his mouth.[3] On August 13, 2024, Agency issued its Final Notice of Suspension Without Pay. The effective date of Employee's suspension was October 2, 2024.[4]

On October 16, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He asserted that Agency's adverse action was taken without cause, was arbitrary and capricious, violated his due process rights, and violated the Colle ctive Bargaining Agreement ("CBA") between Agency and the D.C. Police Union. As a result, he requested that Agency's action be reversed; that he receive back pay and benefits lost as a result of the suspension; that he be awarded attorney's fees; and that he be permitted to work in outside employment.[5]

Agency filed its Answer to the Petition for Appeal on November 15, 2024. It contended that its penalty was warranted on its belief that Employee engaged in criminal conduct. Agency explained that on August 29, 2024, an arrest warrant was obtained for Employee in the Superior Court of the District of Columbia. According to Agency, Employee was charged with assault in violation of D.C. Code § 22-404, for unlawfully assaulting and threating Officer AL in a menacing

[2] *Petition for Appeal*, Exhibits #1 and #3 (October 16, 2024).
[3] For privacy reasons, the complaining Officer's initials will be used when referring to her.
[4] *Petition for Appeal*, p. 10-11 and 21-23 (October 16, 2024).
[5] *Id*., 2-4.

manner. Therefore, Agency requested that Employee's suspension action be upheld.[6]

The OEA Administrative Judge ("AJ") issued an order requesting the parties to submit briefs addressing whether Agency had cause to place Employee on Indefinite Suspension pending the outcome of his criminal matter.[7] In its brief, Agency asserted that it had cause to impose the indefinite suspension because Employee was accused of serious criminal conduct and arrested for simple assault. It opined that it had cause based on Employee's charging documents.[8] Agency argued that its penalty was warranted because Employee's alleged misconduct was egregious and threatened its operations as well as its public safety mission. According to Agency, Employee was indefinitely suspended while his criminal charges were pending. However, it returned Employee to paid status and awarded back pay after the criminal matter was resolved when Employee was found not guilty of the assault.[9]

In his brief, Employee argued that Agency lacked cause to indefinitely suspend him without pay. Employee contended that the holding in *District of Columbia v. Green,* 687 A.2d 220 (D.C. 1996), was not applicable because unlike the officer in *Green*, he was never indicted or convicted of a crime. He explained that he was acquitted for his alleged conduct, and consequently, Agency had no cause to impose the penalty of an indefinite suspension without pay. Employee further argued that Agency did not prove that he engaged in unwanted repeated contact or that he sexually assaulted, stalked, trapped, or threatened Officer AL. As a result, Employee

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[6] *Metropolitan Police Department's Answer to the Petition*, p. 1-3 (November 15, 2024).
[7] *Post Status/Prehearing Conference Order* (March 27, 2025).
[8] Agency argued that in *District of Columbia v. Green*, 687 A.2d 220 (D.C. 1996), the D.C. Court of Appeals held that Agency established reasonable cause for an officer's indefinite suspension based on an arrest pursuant to a warrant, coupled with review of the investigative materials underlying the warrant. Agency provided that similarly, it considered Employee's arrest warrant charging him with simple assault and the facts surrounding the incident. Prior to proposing suspension, and after considering Employee's written responses, Agency evaluated the seriousness of the charged offense, the supporting evidence, and the extent to which Employee's alleged criminal conduct affected his fitness to remain in a pay status as a police officer. It opined that it acted with reasonable cause to suspend Employee.
[9] *Supplement in Support of Agency's Motion to Dismiss, or in the Alternative, Motion for Summary Disposition*, p. 4-8 (April 17, 2025).

opined that the indefinite suspension was inappropriate and requested that OEA rule that he is the prevailing party.[10]

On June 20, 2025, the AJ issued an Initial Decision. She found that Agency prematurely placed Employee on Indefinite Suspension Without Pay and thereby violated the relevant CBA provisions. The AJ also held that Agency did not provide evidence to prove that Employee's conduct constituted a crime. Therefore, she determined that Agency lacked cause for both charges to warrant the adverse action taken against Employee. The AJ also ruled that because Employee was acquitted of the charges and returned to pay status and awarded back pay, he received all remedies that OEA could have provided to him. Consequently, she reversed Agency's action. Because Employee was already made whole, she determined that no further award was warranted.[11]

Agency disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on July 25, 2025. It contends that the Initial Decision is not based on substantial evidence supported by the record; that the AJ failed to address all issues of law and fact; and that the decision was based on an erroneous interpretation of law. Agency asserts that the AJ improperly relied on the proposed notice of indefinite suspension rather than the Agency's final decision. It is also Agency's position that it provided evidence of cause for the charges against Employee with the submission of its investigative report which included witness interviews; a summary of Officer AL's body-worn camera footage; and screenshots of text messages and missed calls between

[10] *Employee's Reply to Agency's Supplement to Motion to Dismiss, or in the Alternative, Motion for Summary Disposition*, p. 3-13 (May 8, 2025). Agency filed a sur-reply maintaining its assertions that it had reasonable cause to impose Employee's suspension based on his arrest warrant and supporting documents. It also asserted that Employee's criminal matter was resolved, and he was subsequently returned to work with back pay effective February 5, 2025. *Agency's Sur-reply to Employee's Replyin Further Support of Agency's Motion for Summary Disposition,* p. 1-5(May 22, 2025).

[11] *Initial Decision*, p. 5-9 (June 20, 2025).

Employee and Officer AL. As a result, it requests that the Initial Decision be reversed.[12]

On August 28, 2025, Employee filed its Answer to Agency's Petition for Review. He argues that the Initial Decision is based on substantial evidence and that Agency's adverse action was taken without cause. Employee asserts that he did not engage in conduct constituting a crime which was evident in his acquittal of criminal wrongdoing. He also contends that a copy of Agency's investigative report was never submitted to OEA. Therefore, Employee requests that the Board deny Agency's petition.[13]

Substantial Evidence

According to OEARule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then they must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidenc e that a reasonable mind could accept as adequate to support a conclusion.[14]

Cause

As provided in Agency's Final Agency Decision, Employee was charged with violation of General Order 120.21, Attachment A, Number 6; General Order 201.09, Section II(A)(1); and Mayor's Order 2023-131, Sections III(D)(8), (12), and (14), and Section III(E). General Order 120.21, Attachment A, Number 6 provides that the "conduct described . . . is prohibited and shall serve as the basis for discipline: engaging in conduct that constitutes a crime."[15] General Order

[12] *Agency's Petition for Review of Initial Decision* (July 25, 2025).
[13] *Answer to Agency's Petition for Review of Initial Decision* (August 28, 2025).
[14] *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[15] *Agency's Motion to Dismiss, or in the Alternative, Motion for Summary Disposition*, Exhibit #17 (January 14, 2025).

201.09, Section II(A)(1) provides the following:

> . . . MPD prohibits, and will not tolerate, any form of unlawful discrimination. Such conduct may result in disciplinary action as necessary, up to, and including, termination of employment. The following types of discrimination are prohibited by law, even if the conduct was not specifically intended to be offensive to anyone and/or the employee to whom it is directed is not personally offended.
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> Sexual harassment – hostile work environment: conduct of a sexual nature, whether direct or indirect, verbal or nonverbal, that unreasonably alters an individual's terms, conditions, or privileges of employment or has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or
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> Quid pro quo: sexual advances, requests for sexual favors, or other conduct of a sexual nature where submission to the conduct is made either explicitly or implicitly a term or condition of employment or where submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual's employment.
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> Conduct need not be severe or pervasive to constitute sexual harassment and no specific number of incidents or specific level of egregiousness is required.[16]

Finally, Mayor's Order 2023-131, Sections III(D)(8), (12), and (14), and Section III(E) provides the following:

> D. Examples of conduct that can contribute to or constitute sexual harassment or an intimidating, hostile, or offensive work environment include:
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> > 8. Unnecessary and inappropriate touching or physical contact, such as intentional and repeated brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;
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> > 12. Any unwanted repeated contact, including, but not limited to in-person, or telephonic, for romantic or sexual purposes;
> >
> > 14. Sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or

[16] *Id*., Exhibit #19.

> threatened, threats of bodily harm relating to sex or the refusal to have sex, or other crimes related to acts of sexual harassment.
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> E. Further, the District may treat some conduct of a sexual nature as misconduct, even when it does not rise to the level of unlawful sexual harassment actionable under the D.C. Human Rights Act. As an example, an employee who tends to greet people with a hug may have been warned that the conduct was offensive to some employees and then hugs an employee whom they have not seen in many months. The conduct may not rise to the level of "unreasonably altering the individual's terms, conditions, or privileges of employment," but it could constitute misconduct since they had been warned that some employees associate hugging with unwanted sexual contact that is offensive in the work environment.[17]

According to Agency, Employee approached the driver's side door of Officer AL's car; reached inside the window and grabbed her by the vest; pulled her close to his face and opened his mouth.[18]

This Board agrees with the AJ's holding in the Initial Decision that there was not substantial evidence to establish cause. Agency offered reports which provided narrative statements from Officer AL. The record does not include any statements related to the incident from Employee.[19] Agency did not submit any video of the incident to OEA; however, it did provide the Superior Court of the District of Columbia's Affidavit in Support of an Arrest Warrant which provided a summary of the closed-circuit television (CCTV) footage. The summary explained that the footage offered no audio but showed Officer AL's car stopped and approached by an individual on foot. However, the affidavit provided that "the interaction between [Officer AL] and [Employee] was out of view of the camera."[20] Agency also provided a text exchange between Employee and Officer AL. In the text messages, Officer AL alleged that Employee tried

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[17] https://mayor.dc.gov/page/mayor%E2%80%99s-order-2023-131.
[18] *Metropolitan Police Department's Answer to the Petition*, Exhibit #1 (November 15, 2024).
[19] *Agency's Motion to Dismiss, or in the Alternative, Motion for Summary Disposition,* Exhibit # 1, Attachments #2, 4, 5, and 9 (January 14, 2025).
[20] *Id.,* Exhibit # 2.

to kiss her; however, Employee provided that he was not trying to kiss her.[21] Finally, Employee submitted the Superior Court trial transcript where Judge Peter Krauthamer found that the video he reviewed was of such poor quality that he could not see anything. The judge held that he doubted Officer AL's account of what occurred. Consequently, he found that Employee was not guilty of the alleged assault.[22] Accordingly, a review of the record shows that there was not substantial evidence that Employee committed conduct that constitutes a crime or harassment.

Penalty Within the Range Allowed by Law, Regulation, or Applicable Table of Penalties

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).[23] According to the Court in *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency.[24] Because Agency lacked cause against the Employee,

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[21] *Id.,* Exhibit # 3.

[22] *Supplement in Support of Officer Forrester's Opposition to Agency's Motion to Dismiss, or in the Alternative, Motion for Summary Disposition*, Exhibit #2 (February 11, 2025).

[23] *Anthony Payne v. D.C Metropolitan*, OEA Matter No. 1601-00540-01*, Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No.1601-0211-98*, Opinion and Order on Petition for Review* (September 5, 2007); *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).

[24] The D.C. Court of Appeals in *Stokes* reasoned that when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but it should ensure that "managerial discretion has been legitimately invoked and properly exercised." As a result, OEA has previously held that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office. *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department and Emergency Medical Services*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011); and *Holland v. D.C. Department of Corrections*, OEA Matter No. 1601-0062-08 (April 25, 2011).

Specifically, OEA held in *Lovev. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office. *Love* also provided the following:

the indefinite suspension penalty was not appropriate in this case. As the AJ provided, after the resolution of Employee's criminal case, he was reinstated to his position and received back pay from the date that he was inappropriately placed on an Indefinite Suspension. Thus, Employee has received all remedies owed to him which could have been awarded by OEA. Accordingly, Agency's Petition for Review is denied.

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED.**

FOR THE BOARD:

Pia Winston, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.