THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JOHN MCDONALD,	)	OEA Matter No. 1601-0005-20
Employee	)	
	)	Date of Issuance: November 5, 2020
v.	)	
	)	JOSEPH E. LIM, ESQ.
METROPOLITAN POLICE DEPARTMENT,	)	Senior Administrative Judge
Agency	)	

Marc Wilhite, Esq., Employee Representative
Jonathan Hall, Esq., Agency Representative

INITIAL DECISION[1]

PROCEDURAL BACKGROUND

On November 5, 2019, John McDonald ("Employee"), a Police Lieutenant at the Metropolitan Police Department ("MPD" or "Agency"), filed a Petition for Appeal with the Office of Employee Appeals ("OEA") challenging Agency's final decision to demote him from Captain to Lieutenant for Insubordination and Conduct Unbecoming an Officer. I held a Telephonic Prehearing Conference on May 5, 2020, and I ordered the submission of legal briefs on the issues identified at the conference. Following extensions requested by the parties, they have fully complied. The record is closed.

JURISDICTION

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

ISSUES

1. Whether Agency had cause for adverse action against Employee.
2. If so, whether Agency's penalty of demotion is appropriate under the circumstances.

UNCONTROVERTED FACTS[2]

1. Employee was appointed to MPD as a police officer on October 20, 1997, and later assigned to the Sixth District ("6D"). He rose through the ranks to become Captain.
2. Employee has no sustained adverse actions in the last three (3) years.

3. On May 23, 2019, members of MPD's 6D gave a presentation ("Brief-back") regarding the Summer Crime Plan to Chief of Police Peter Newsham and Patrol Chief Chanel Dickerson inside of the Joint Operations Command Center ("JOCC") at MPD headquarters, 300

1 This decision was issued during the District of Columbia's Covid-19 State of Emergency.
2 Derived from the parties' joint stipulations of facts and uncontested documents and exhibits of record.

Indiana Avenue, NW. Other senior officials and civilian employees were present in the JOCC. Employee, who at that time held the rank of captain, presented during the Brief-back.

4. During his presentation, Employee referred to the Mayfair/Paradise neighborhood of 6D as a "rat wren."[3] Chief Newsham asked Employee to repeat and explain what he had just said. Employee stated that he described the area as a "rat wren," based on the fact that the neighborhood was a maze of pathways and buildings that made it difficult for police officers to navigate the area and apprehend criminal offenders. Chief Newsham admonished Employee that he should not use these words to refer to communities in the District of Columbia. Employee apologized and continued with his presentation.

5. A short time later in the presentation, Employee stated that officers need to return to "Old School" policing. That the officers need to exit their cruisers and approach individuals. Once those individuals leave, officers are to look for items such as guns and drugs, left behind as in an Easter Egg Hunt. After the comments were made, Commander Durriyyah Habeebullah, commander of the Sixth District and Employee's direct supervisor, interjected that the Department does not hunt people.

6. After the conclusion of the Brief-back, Patrol Chief Dickerson spoke to Employee about the comments he made during his presentation. Chief Dickerson advised Employee that she was disturbed by the language used to describe law enforcement efforts in the Sixth District. Employee advised Chief Dickerson that he himself was a resident of the Mayfair/Paradise community for a short period of time in the late 1990s and again apologized for his remarks and stated that he would not utilize the referenced terms in the presence of community members.

7. On May 28, 2019, an anonymous letter of complaint was sent to the District of Columbia Office of the Inspector General, and to Assistant Chief Wilfredo Manlapaz, who oversees the MPD Internal Affairs Bureau ("IAB") which includes the Internal Affairs Division ("IAD"). Among other assertions, the anonymous letter from an "MPD Insider" stated that Employee a "white male," referred to the "mostly black residents" of Mayfair/Paradise as "rats."

8. On June 3, 2019, Captain Brian Bray of IAD generated an Incident Summary number to initiate an investigation into Employee's misconduct. On or about July 9, 2019 Captain Bray submitted the Final Investigative Report. He sustained the allegation that Employee had used the term "rat wren" to refer to the Mayfair/Paradise Housing Complex. However, he classified the specific allegation that Employee had referred to the residents as "rats," as unfounded. Additionally, he determined that there were insufficient facts to conclude that Employee inappropriately used the term "Easter egg hunt" to refer to arresting people.

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3 The parties were unable to reach a stipulation regarding the word which followed "rat." MPD's investigation revealed that witnesses could not determine if Employee said "rat ring," "rat ran," or "rat rein." See Employee's Petition for Appeal, Attachments 4 to 14 (November 5, 2019). Employee contends that he used the term "rat wren." *Id*, Attachment 15 (Employee's September 9. 2019, letter to Director Angela Simpson).

9. On July 26, 2019, Assistant Chief Manlapaz issued a memorandum overriding, in part, Captain Bray's conclusions. In his memorandum, Chief Manlapaz agreed with Captain Bray's finding of fact that Employee referred to the layout of the neighborhood as a "rat wren" and used the phrase "Easter egg hunt."

10. However, Chief Manlapaz found, "[t]he inference and perception when [Employee] utilized these terms is that the residents of this neighborhood are vermin and animals." Chief Manlapaz stated, "[t]he utilization of these terms in this context is inappropriate, disrespectful, and unprofessional. It undermines the ability of [then-Captain] McDonald to mentor and lead his subordinates in providing police services." Contrary to Captain Bray's recommendation, Chief Manlapaz sustained the allegations of misconduct.

11. On August 16, 2019, Employee was served with the Notice of Proposed Adverse Action ("NPAA"), wherein he was charged with one specification of Conduct Unbecoming an Officer and two specifications of Violating Orders or Directives, as follows:

> **Charge No. 1**: Violation of General Order 120.21, Disciplinary Procedures and Processes, Table of Offense and Penalties, A, 12, which states, "Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the 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.
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> Specification No. 1: In that, on May 23, 2019, while presenting your crime plan for your sector at the time, Sixth District, to members of the MPD Executive Command and civilian support staff in attendance, you referred to the layout of the Mayfair/Paradise neighborhood as a "rat ring." Additionally, you referred to the need for officers to go out on "Easter Egg Hunts" within this community. The inference and perception when utilizing these terms is that the residents of this neighborhood are vermin and animals. The utilization of these terms in this context is inappropriate, disrespectful, and unprofessional.
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> **Charge No. 2**: Violation of General Order Series 120.21, Attachment A, Part A-16, which states, ''Failure to obey orders or directives issued by the Chief of Police."
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> Specification No. 1: In that, on May 23, 2019, while presenting your crime plan for the Sixth District to members of the MPD Executive Command and civilian support staff in attendance, you used the words "rat ring" to describe the Mayfair/Paradise community, and utilized the term "Easter Egg Hunt" to describe a tactic of policing. Your misconduct is described under G.O. 201.26, Part V, C, 3, which states, "All members shall: Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not

> use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person."
>
> Specification No. 2: In that, on May 23, 2019, while presenting your crime plan for the Sixth District to members of the MPD Executive Command and civilian support staff in attendance, you used the words "rat ring" to describe the Mayfair/Paradise community, and utilized the term "Easter Egg Hunt" to describe a tactic of policing. Your misconduct is described under G.O. 201.26, Part V, E, 1, which states, "It is expected that every member of this Department is keenly aware of the fact that public support and cooperation is essential if members are to effectively fulfill their police responsibilities. The extent to which the public will cooperate with the MPD is dependent upon its respect for, and confidence in, the MPD and its members.

12. The NPAA also performed a Douglas Factor analysis before proposing Employee's penalty.[4]

13. The proposed penalty was that Employee would be demoted from captain to the rank of lieutenant, and that Employee be suspended for fifteen (15) work-days. Thereafter, Employee submitted his response to the NPAA contesting each administrative charge. In particular, Employee acknowledged that he used the phrases "rat wren" and "Easter egg

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4 In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-306 (1981), the Merit Systems Protection Board, this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows:

> 1) The nature and seriousness of the offense, and its relation to the employee's duties, including whether the offense was intentional or technical or inadvertent, or was committed intentionally or 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 the 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 where 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
> 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

hunt" during the brief-back, but that he used the term "rat wren" to describe an area (Mayfair/Paradise), which has maze or labyrinth like streets, and the term "Easter egg hunt" to describe the need for police to hunt for items left by people. Employee opposed Chief Manlapaz's conclusion and inference that he was referring to the citizens as vermin or animals. Employee also contested the reasonableness of a demotion and a 15-day suspension.

14. On September 19, 2019, Employee was served with the Final Notice of Adverse Action ("FNAA"). The FNAA provided an analysis of each of Employee's arguments. Upon consideration of those arguments and the record, the FNAA sustained the charges and penalty as initially proposed in the NPAA.

15. On September 30, 2019, Employee submitted an appeal to the Chief of Police, wherein he acknowledged using the terms "rat wren" and "Easter Egg hunt" as described in the Final Investigative Report. As in his initial response to the NPAA, Employee asserts that he used these terms to describe the Mayfair/Paradise area and as a descriptor for looking for items. Employee continued to assert that he was not referring to anyone as vermin or animals. Employee also noted that he did not make these statements in the presence of subordinates or the public. Employee renewed his request that the penalty issued be reduced in order to be reasonable.

16. On October 17, 2019, after thorough consideration of Employees' arguments and the record, Chief Newsham issued the Final Agency Action letter denying, in part Employee's appeal. Chief Newsham's letter included the following reasoning:

> I appreciate that you have taken responsibility for your language. I credit your statement that you did not intend to call the citizens who reside in the Mayfair and Paradise neighborhood "rats," or insist that they should be "hunted." However, regardless of your intent, your language demeaned citizens of the District of Columbia. It was completely disrespectful and inappropriate. There is simply no room in this Department for references to people or neighborhoods using those terms. You exhibited terrible judgment. I agree with Assistant Chief Manlapaz's conclusion that the "inference and perception when [you] utilized these terms is that the residents of this neighborhood are vermin and animals."
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> . . .
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> I do not take the imposition of a demotion lightly. Reaching the rank of captain with the Metropolitan Police Department is a tremendous personal and professional achievement. As you highlight in your letter, you have made important contributions to the Department during your career, and I expect that you will continue to do so.
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> . . .
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> I have taken your long and commendable service to the Department into account. I have also considered your lack of disciplinary history. Unfortunately, these factors are insufficient to overcome your egregious misconduct.

17. Chief Newsham sustained the charges against Employee and upheld the demotion from the rank of captain to the rank of lieutenant. However, Chief Newsham rescinded the proposed 15-day suspension.

18. Employee's appeal to the Office of Employee Appeals followed.

Agency's Position[5]

Agency contends that Employee was guilty of violating General Order 120.21, Disciplinary Procedures and Processes, Table of Offense and Penalties, A, 12, which states, "Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the 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. Specifically, Employee was charged with making verbal statements that referred to a District neighborhood as a "rat ring." Agency contends that the inference and perception for Employee's use of this term is that the residents are vermin and animals.

Agency also contends that Employee violated General Order Series 120.21, Attachment A, Part A-16, which states, ''[f]ailure to obey orders or directives issued by the Chief of Police." Specifically, Employee was charged with disobeying General Order 201.26, Part V, Section C-3, which states, "[a]ll members shall: Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person." Agency contends that Employee's use of the terms "rat ring" to describe a District community and "Easter egg hunt" to describe a policing tactic are terms that might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.

Employee's Position[6]

Employee states that there is no substantial evidence to support the charges against him. He denies any racist intent and states that he was not referring to the neighborhood residents but that he was merely describing the maze or labyrinth of that particular D.C. neighborhood which makes it difficult for police officers to travel through. Employee points out that Acting Inspector Brian Bray, in his investigation, found the allegations against him to be either unfounded or insufficient to be sustained. Employee also argues that his penalty is excessive, overly punitive and inconsistent with the standard of progressive discipline. Employee alleges disparate treatment.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Whether Agency had CAUSE FOR ADVERSE ACTION AGAINST EMPLOYEE

Agency accuses Employee of two charges: conduct unbecoming an officer and insubordination in his failure to comply with G.O.120.21 and G.O. 201.26. The gravamen of Agency's charges centers on Employee's use of the words, "rat" when describing a District neighborhood and "Easter egg hunt" when describing a police search for guns and illegal drugs during an in-house presentation to the police chief and the patrol chief. Employee protests that he

5 See Agency Brief (July 2, 2020) and Agency's Response to Employee's Brief (September 4, 2020).
6 Employee's Brief (August 13, 2020).

never referred to the neighborhood residents as "rats" and that his use of the term "Easter egg hunt" was simply his way of describing the difficulties of searching for guns and illegal drugs in this particular neighborhood, not as a way of hunting humans. To buttress his argument, Employee uses the favorable findings of Acting Inspector Brian Bray to prove that Agency has no substantial evidence against him.

However, as Agency's NPAA indicates, Agency did not accuse Employee of calling the neighborhood residents as "rats" or that he referred to these residents as vermin to be hunted when Employee used the term "Easter egg hunt." Rather, Agency accuses Employee of giving the perception of using words that might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person. The specification for Agency's charge of "conduct unbecoming an officer" reads, "…The *inference and perception* when utilizing these terms is that the residents of this neighborhood are vermin and animals. The utilization of these terms in this context is inappropriate, disrespectful, and unprofessional." [Emphasis added.] Likewise, the first specification for the charge of "Failure to obey orders or directives issued by the Chief of Police" state that "Members shall not use terms or resort to name-calling, *which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person*." [Emphasis added.] Thus, what Agency accuses Employee of is using words that create a perception of disrespect for a person. In other words, Agency did not accuse Employee of having the intent to be disrespectful of others; but rather, it accused him of giving the impression of being disrespectful of others.

Next, to prove that his words were not offensive or derogatory, Employee points to the nine written statements of witnesses who were not offended by his words versus the four (including the unidentified complainant) who were offended. However, Employee misses the point. Agency's G.O. 201.26, Part V, C, 3, states, "All members shall: Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. *Members shall not use terms* or resort to name-calling, *which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person*." [Emphasis added.] Thus, the G.O. does not rely on having a majority of people being offended. Rather, the language of the G.O. simply bans the use of any term that might be deemed offensive by someone. In this matter, it is clear and undisputed that four people, including the Police Chief, were in fact offended by Employee's choice of words.

I therefore make the following findings of fact based on the preponderance of the evidence. First, Employee did not show racist or disrespectful intent when he used the words "rat wren" or "Easter egg hunt" during his presentation to his superiors as he was not referring to the inhabitants of the neighborhood but rather, to the neighborhood geography. Second, Employee's use of the words "rat" and "Easter egg hunt" offended some of the people attending the presentation and were deemed by them as offensive. Based on these, I conclude that Employee violated MPD's General Order and that Agency had cause for adverse action against Employee.

Whether Agency's penalty of demotion was appropriate.

Employee alleges that he was a victim of disparate treatment in that other officers had not been demoted as he has for the same offense. OEA has historically held that if an employee is singled out for punishment or is punished in a disproportionate manner as compared with other similarly-situated employees, the punishment may be reviewed for consistency and may be reduced or reversed altogether.[7] Over the years, OEA has reasoned that an employee who raises

7 *Employee v. Agency*, OEA Matter No. 1601-0180-81, 31 D.C. Reg. 2186 (1984); *Harris v. Department of Human Services*, OEA Matter No. 1601-0188-91 (May 19, 1993); and *Alvin Frost v. Office of the D.C. Controller*, OEA Matter No. 1601-0098-86R94 (May 18, 1995).

an issue of disparate treatment has the burden of making a *prima facie* showing that they were treated differently from other similarly-situated employees.[8]

In *Hutchinson v. D.C. Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 22, 1994), the OEA Board provided the following as it relates to disparate treatment:

> A number of factors are important in determining whether a penalty is reasonable. Among these factors is whether or not the agency has meted out similar penalties for similar offenses. However, the principle of similar penalties for similar offenses does not require that agencies insist upon rigid formalism, mathematical rigidity, or perfect consistency regardless of variations, but that they apply practical realism to each situation to assure that employees receive fair and equitable treatment where genuinely similar cases are presented. . . . Employee bears the burden of showing that the circumstances surrounding the misconduct are substantially similar to the circumstances in the cases being compared. . . Normally, in order to establish disparate treatment, the employee must show that they worked in the same organizational unit as the comparison employees, and they were subject to discipline by the same supervisor within the same general period.[9]

In the instant matter, Employee mentioned an Officer Jacobs but failed to provide information to show that the officer worked in the same organizational unit and was subject to discipline by the same supervisor within the same general period. In the only exhibit submitted that purports to show a list of police officers who were treated differently, I note that every single one of these officers received demotions.[10] Some of them received suspensions in addition to demotions. Employee then argues that his reassignment to another District is additional punishment. However, I note that commanders and Police Chiefs have the managerial right to reassign officers to a different District. It would be a stretch to conclude that management's

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8 *Hutchinson v. D.C. Fire Department*, OEA Matter No. 1601-01190-90, *Opinion and Order on Petition for Review* (July 22, 1994); *Lewis v. Department of Veteran Affairs*, 113 M.S.P.R. 657 (2010).

9 Citing *Douglas v. Veterans Administration*, 5 M.S.P.R 280 (306-307)(1981); *Bess v. Department of the Navy*, 46 M.S.P.R. 583 (1991); *Carroll v. Department of Health and Human Services*, 703 F.2d 1388 (Fed. Cir. 1983); *Kuhlmann v. Department of Health and Human Services*, 10 M.S.P.R 356 (1982); *Mille v. Department of Air Force*, 28 M.S.P.R 248 (1985). *Also see Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Adewetan v. D.C. General Hospital*, OEA Matter No. 1601-0021-93 (July 11, 1995); *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92, *Opinion and Order on Petition for Review* (September 29, 1995); *Jordan v. Metropolitan Police Department*, OEA Matter No. 1601-0285-94, *Opinion and Order on Petition for Review* (September 29, 1995); *Shade v. Department of Administrative Services*, OEA Matter No. 1601-0360-94 (August 3, 1999); *Reynold Morris v. Office of State Superintendent of Education*, OEA Matter No. 1601-0261-10 (September 4, 2013); *Shalonda Smith v. D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0195-11 (November 27, 2013); and *Shelby Ford v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0066-13 (January 12, 2016).

10 Agency's Response to Employee's Brief (September 4, 2020), Exhibit A.

exercise of this right amounts to punishment. Based on these, I find that Employee failed to show disparate treatment.

Next, Employee presented his argument as to why Agency's analysis of the *Douglas* Factors in determining his penalty is flawed by proceeding to present how he would have done his own *Douglas* Factor analysis. However, Employee's argument must fail. The OEA may overturn the agency decision only if it finds that the agency "failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness." *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1985). "Not all of [the *Douglas*] factors will be pertinent in every case, and frequently in the individual case some of the pertinent factors will weigh in the [petitioner's] favor while others may not or may even constitute aggravating circumstances." *Douglas, supra*, 5 M.S.P.R. at 306. Although the OEA has "'marginally greater latitude of review' than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate." *Stokes*, 502 A.2d at 1011 (citing *Douglas*, 5 M.S.P.R. at 300). The "primary discretion" in selecting a penalty has been entrusted to agency management. *Stokes*, 502 A.2d at 1011.

> Selection of an appropriate penalty must ... involve a responsible balancing of the relevant factors in the individual case. The 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, is it appropriate for the OEA then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.[11]

Here, Agency has considerable latitude in how it presents and analyzes the *Douglas* Factors. There is no requirement that Agency performs this analysis to Employee's satisfaction. Agency adequately discussed each of the factors and presented its reasons for coming up with its choice of penalty. I must therefore find that Agency was within its managerial prerogative in how it performed its *Douglas* analysis.

The only remaining issue is whether Agency's choice of a demotion as its discipline was an abuse of discretion. Any review by this Office of the agency decision of selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[12] Therefore,

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11 *Douglas*, 5 M.S.P.R. at 300) (internal quotations marks and bracketing omitted).

12 *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review*

when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."[13] When the charge is upheld, this Office has held that it will leave Agency's penalty "undisturbed" when "the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment."[14]

As Employee himself concedes, the range of penalties for a first offense of insubordination ranges from a ten-day suspension to removal.[15] The penalty for a first offense of conduct unbecoming an officer ranges from a three-day suspension to removal.[16] The record shows that Agency's decision was based on a full and thorough consideration of the nature and seriousness of the offense, as well as any mitigating factors present. For the foregoing reasons, I conclude that Agency's decision to demote Employee to the rank of Lieutenant as the appropriate penalty was not an abuse of discretion and should be upheld.

ORDER

It is hereby ORDERED that the agency's action of demoting Employee to a lower rank is UPHELD.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge

(March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't,* OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

13 *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

14 *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).

15 Agency General Order 120-21, Disciplinary Procedures and Processes, effective April 13, 2006.
16 *Id*.