

Notice: This decision is subject to formal revision before publication in the District of Columbia Register. Parties are requested to notify the Office Manager of any formal errors in order that corrections be made prior to publication. This is not intended to provide an opportunity of a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
CHERYL WILKINS,	)	
Employee	)	OEA Matter No. 1601-0084-13
	)	
v.	)	Date of Issuance: September 4, 2015
	)	
DISTRICT OF COLUMBIA	)	MONICA DOHNJI, Esq.
DEPARTMENT OF PUBLIC WORKS,	)	Administrative Judge
Agency	)	
_____	)	
Gina Walton, Employee Representative	)	
Rahsaan Dickerson, Esq., Agency Representative	)	

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 25, 2013, Cheryl Wilkins (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Public Works’ (“DPW” or “Agency”) decision to terminate her from her position as a Parking Officer, effective March 29, 2013. Employee was terminated based on the following charges: 1) any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: discourteous treatment of public and violation of employee conduct standard and operating procedures;<sup>1</sup> and 2) any on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious, specifically rudeness.<sup>2</sup> On May 29, 2013, Agency filed its Answer in response to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on May 8, 2014. After several conferences and brief submissions, an Evidentiary Hearing was held on May 13, 2015. Both parties were present for the Evidentiary Hearing. Thereafter, I issued an Order dated June 8, 2015, notifying the parties that the transcript from the Evidentiary Hearing was available for pickup at OEA.

<sup>1</sup> District of Columbia Municipal Regulation (“DCMR”) Chapter 6-B Section 1603.3(f). While Agency does not list the specific section under 6-B DCMR 1603.3(f) for discourteous treatment, pursuant to the specifications found in the Table of Appropriate Penalties 6-B DCMR 1619.1(6)(i), discourteous treatment of public is a subcategory under 6-B DCMR 1603.3(f)(9) – Failure to give assistance to the public (discourteous treatment of the public).

<sup>2</sup> 6-B DCMR Section 1603.3(g).

The Order also provided the parties with a schedule for submitting their written closing arguments. Both parties have submitted their written closing arguments. The record is now closed.

### JURISDICTION

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

### ISSUES

- 1) Whether Employee's actions constituted cause for adverse action; and
- 2) If so, whether the penalty of termination is within the range allowed by law, rules, or regulations.

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

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.

### FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

As part of the appeal process within this Office, I held an Evidentiary Hearing on the issue of whether Agency's action of terminating Employee was in accordance with applicable law, rules, or regulations. During the Evidentiary Hearing, I had the opportunity to observe the poise, demeanor and credibility of the witnesses, as well as Employee. The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of Employee's appeal process with this Office.

### SUMMARY OF MATERIAL TESTIMONY

#### *Agency's Case in Chief*

#### **1. Thys J. DeYoung (Transcript pages 18-63).**

Thys DeYoung ("DeYoung") works for the U.S. Office of Personnel Management and lives in the District of Columbia. He has been a D.C. resident for ten years. On January 14, 2013, at around

8:00 p.m., DeYoung was having dinner at Meridian Pint, located at the corner of Park Road and 11<sup>th</sup> Street. DeYoung was having dinner with Eric Piersma, Steve Dobberosky and Doug Armstrong. After they finished dinner, they were getting ready to leave and called for an Uber car.

As DeYoung, and the others left Meridian Pint, they went out the door and stood against the window under a ledge to stay out of the rain. He stated that the Uber driver responded right away and let them know that he was coming. He testified that he called the Uber around 9:30 p.m. and they were informed that the Uber was coming at 9:31p.m. DeYoung stated that the Uber came at 9:34 p.m. When the Uber driver pulled up, they ran across the street to get in the car. When they pulled off, the Uber driver stopped and put the car in park. The driver got out of the car and then DeYoung noticed that Officer Wilkins (“Employee”) was behind him. When the driver got back in the car, he slumped over. DeYoung asked him what was wrong and he stated that Employee was giving him a ticket. DeYoung stated that the driver was unsure as to why he was receiving the ticket. The driver and DeYoung got out and asked Employee why she was giving the driver a ticket, and Employee explained to the driver that he was parked in a no parking zone. The driver explained that he was not parked. DeYoung testified that the driver pulled up to pick them up and they came right across the street. DeYoung explained that the driver did not have the car in park until he got out of the car to talk with Employee. DeYoung stated that Employee did not respond to DeYoung’s assertion that he was not parked.

Eventually, DeYoung’s friends came to the back of the car and asked what was going on. DeYoung explained to them that Employee was giving the driver a ticket for parking in a no parking zone. DeYoung testified that the driver was not parked. DeYoung stated that Mr. Armstrong asked how it was possible for them to get in the vehicle if the driver could not stop. DeYoung stated that Employee would not talk with them and she would not look up; she just kept writing the ticket. Then, Employee turned to DeYoung and said “I am not talking to you.” DeYoung testified that at that point, he felt uncomfortable and bullied. He stated that the whole thing was not fair because the driver was not stopped. He explained that there was no way for the driver to pick them up without pulling over, and Employee was right behind him the entire time. He explained that Employee saw that the driver did not get out of the car until he put it in park to talk with her. DeYoung testified that Mr. Armstrong asked the driver if he could take a picture of his license and the tags on his car. DeYoung stated that he did not use any profanity when speaking to Employee and that he was respectful. Then, everyone went back to the car and the driver pulled out. When the driver dropped them off, DeYoung asked him if he could take a picture of the ticket that he received. DeYoung suggested to write to Cathy Lanier about the incident.

DeYoung testified that he received documentation from Uber indicating the time the incident occurred. DeYoung and his party had been discussing how rude and disrespectful Employee was to them. DeYoung apologized to the driver because he felt bad about what happened. He stated that he would write to Cathy Lanier and Uber to find out if the ticket could be dismissed.

DeYoung wrote an email to Cathy Lanier explaining what had occurred with Employee. DeYoung had also copied Jim Graham on the email. DeYoung stated that Lanier turned the email over to Commander Kishter, who eventually sent him an email letting him know that the ticket was dismissed. DeYoung felt like the incident was a huge injustice to the driver. He also felt like Employee was being unreasonable. DeYoung stated that Employee had a lot of attitude. He also stated that while she was writing the ticket, there was a line of cars parked behind her. He explained that the cars could

not move or go anywhere. DeYoung testified that his party was not intoxicated. DeYoung is 6'3 and 182 pounds. He stated that on the date of the incident, it was dark and rainy.

## **2. William Howland (Transcript pages 64-138).**

William Howland ("Howland") is the Director of the Department of Public Works ("Agency"). He provides leadership for the department and sets the standards of conduct. Howland makes the final decision on disciplinary actions, including terminations. Howland testified that Agency provides training to employees; provides them memos that outline permissible conduct; and conducts sessions that advise employees on admissible conduct.

In 2008, Howland issued a document on disciplinary action as a result of reoccurring activity that Agency would no longer tolerate. He explained that this document was provided to all employees and a second document on disciplinary action was also generated. He explained that each supervisor provided the document to the employees and the employees were assigned a document indicating that they had received the information. Further, the information was posted on Agency's bulletin boards.

Howland testified that the first three items on the memo were necessary because there were a number of incidents that were occurring. Howland explained that additional things were added to the memo, including discourteous treatment towards the public, supervisor or other employees. He explained that discourteous treatment to the public is unacceptable at Agency. He further explained that this type of treatment could impact the perception of Agency and there could be complaints filed with the City Council and the Mayor.

Howland provided that parking enforcement officers have an employee handbook that discusses how they are to behave on a daily basis. He explained that the officers go through an extensive nine week training program that discusses regulations and customer service. He testified that there is a manual that provides the guidelines for the officers. He also explained that there was a separate manual because Agency wanted to be sure that their standard of conduct was appropriate for what their duties were. Howland provided that Section 16 of the standard operating procedure for parking officers provided that, in the case of composure under severe harassment, customers should be handled with the highest level of customer service by all officers. Further, section 18.1 discussed engaging in conduct unbecoming of an employee or attempting to bring disrepute to the Department or the District of Columbia.

Howland was the deciding official for Employee's termination action for the proposed termination issued in 2013. He explained that the hearing officer for the matter provided him the recommendation. He also received an email regarding a complaint from a citizen regarding a parking officer. He asked his administrator to investigate what occurred. He explained that being a parking officer is a difficult position and people complain because they get parking tickets. After an investigation was conducted, Howland determined that Employee acted inappropriately and that disciplinary action needed to be taken against her. Howland stated that Agency decided to terminate Employee. He provided that an advance written notice of a proposal to remove Employee was issued by Keith Cross on February 6, 2013. Howland testified that he reviewed the notice prior to issuing his final decision. He explained that the cause of action was acts or omissions that interfere with the efficiency

and integrity of the government, discourteous treatment of the public in violation of employee conduct standards and operating procedures. He stated that the final part of the cause of action included rudeness.

The notice provided Employee her rights regarding her ability to provide a response in defense. Howland testified that Employee provided a response and he reviewed it. He stated that Employee also exercised her right to have an administrative hearing. He testified that Employee's response was provided to the hearing officer. Howland also had a chance to review the hearing officer's report. Howland provided that the hearing officer recommended that the removal be sustained. He explained that the hearing officer provided that based on the photographs submitted by Employee, he found that parking was restricted in the area for zone 1 residents from 7:30 a.m. to 8:30 p.m. However, the ticket that Employee issued was at 9:34 p.m. and there was no restriction on parking. Howland found that the driver's brief absence from the vehicle of less than five minutes failed to establish that the Uber car was illegally parked. Therefore, it could not be considered parking for the driver to leave his car for a brief period while picking up passengers. He explained that according to D.C. Municipal Regulation 18-9901, parking is defined as standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in the loading or unloading merchandise or passengers.

Howland stated that his understanding of the January 14, 2013 incident was that the Uber car driver was picking up four passengers to take them away. He provided that based on the facts of the case and Employee's history, he moved to sustain the termination action. He issued a final decision on March 19, 2013 which provided that he reviewed the hearing officer's written recommendation and Employee's rebuttal. Howland explained that the action was sustained based on the seriousness of the offense and Employee's history. Howland also did an analysis based on the *Douglas* factors. He explained that the offense was serious and Employee should have responded differently. He stated that Employee was trained on how to deal with this situation. Howland provided that Employee should have exercised better judgment.

Howland testified that a performance evaluation was issued for Employee in January of 2013. It provided that Employee was rated 1 for communication, which is the lowest inadequate performance rating. She also was rated 1 for customer service. Howland stated that customer service is paramount to Agency. He explained that this was probably the worst thing that Employee could do. He explained that the disciplinary action was within the standards of permissible actions.

Howland stated that he signed a certificate issued to Employee that indicated that she successfully completed customer service training that was provided on January 11, 2006. She had also signed a sign-in sheet indicating that she attended a class on customer service.

Howland testified that Employee's past disciplinary record weighed heavily on the decision to terminate her. He testified that Employee had a history of being rude and discourteous to her co-workers. He explained that she was previously issued a ten-day advance notice to reprimand her for rude behavior to a co-worker. The notice was issued on January 5, 2011. Then, on January 18, 2011, Keith Cross signed a final decision for an official reprimand according to Section 1614 of the District Personnel Manual. He explained that there were a series of incidents that had occurred on November 30, 2010. He explained that this was the beginning of a pattern of behavior that was unacceptable. He stated that a proposed ten-day suspension was issued to Employee in relation to a bicycle that Employee was assigned. He explained that the bicycle was stolen. He stated that the suspension was in relation to

Employee's incompetence with regard to a serious mistake after she had received training. Howland testified that the suspension was ultimately reduced to five days and was issued on June 1, 2011. Howland stated that there was also a proposed suspension of 15 days for arguing or rude behavior issued to Employee on August 14, 2012. Then, a final notice on a 15-day suspension was issued on September 7 by Michael Carter. Howland stated that the arguing and rude behavior was consistent with the pattern established earlier in the year and the most recent behavior. He provided that the incident had occurred on July 16, 2012, which was six months prior to the final incident.

Howland testified that he did not see the willingness or opportunity for rehabilitation with regard to Employee's conduct. He stated that he suggested for Employee to attend COPE, which was an employee assistance program. He stated that her supervisor referred her to the employee assistance program on July 1, 2011. He explained that the referral occurred after the bicycle incident.

Howland testified that customer service training is available year round. He testified that in 2006, the training was mandatory, but after this date, it was not mandatory. Howland stated that he did not prepare the final decision for Employee's termination. He explained that someone else drafted the decision and he signed it. He explained that he discussed the termination with the person who drafted the final decision. He stated that there have been times when he has disagreed with the recommendation of a hearing officer. He further stated that there are complaints regarding aggressive behavior of the parking officers, and Agency receives such complaints once a month. Howland noted that, if the ticket was issued incorrectly, there may or may not be discipline involved. He stated that if there is rudeness involved, there will almost always be discipline for the behavior. He explained that parking officers can make mistakes in issuing tickets. Howland testified that typically, he will not discipline them for a mistake unless it is egregious. One example he provided is when a parking officer transposes a tag number. He stated that if a ticket is issued and it is clearly unfair, there may be discipline. An example of an unfair ticket would be a sign that says no parking from 4:00 p.m. to 6:30 p.m., and an officer issues a ticket for 8:30 p.m. Howland testified that Agency enforces the parking regulations provided by the Department of Transportation. He stated that in a situation involving a no parking zone, the person is allowed to load and unload passengers.

Howland did not know whether anyone spoke to Employee regarding the January 14, 2013 incident. He stated that he sent an email to Keith Cross and George Carter requesting more information on the incident. Howland believed that the ticket that Employee issued was dismissed because it had the wrong violation. He explained that the final notice provided Employee her rights, including the ability to appeal the termination to OEA. However, he was not aware that the final notices he was issuing contained an incorrect address for OEA.

### **3. Aubrey Williams (Transcript pages 195-204).**

Aubrey Williams ("Williams") has worked for Agency for nine years. She is a parking supervisor. She knows Employee because they were officers on the same squad. William and Employee were also in the same squad when William moved to lead.

Williams stated that in the beginning, Employee was a nice person. However, she stated that once in a meeting, Employee stated that she was going to have her husband come do something to her. She explained that Employee was angry with her and she threatened her. Then in another incident that

had occurred, Employee called her work phone and left a message cursing her out. Williams stated that this behavior was not appropriate. The next day, they did not discuss the incident. Employee apologized to her after Agency dealt with the incident.

**4. Michelle Bryant (Transcript pages 204-213).**

Michelle Bryant (“Bryant”) works for Agency and has been employed with Agency since 2003. She is a parking enforcement officer. During her time with Agency, she has interacted with Employee. She testified that when she was pregnant, Employee pushed her while they were in the hallway. Employee told her that she was immature and needed to grow up. Bryant wrote a statement about the incident and did not hear anything else about it.

Bryant stated that in the beginning, Employee was a positive person. However, Bryant explained that something changed about Employee. She explained that Employee had a negative vibe. Bryant stated that at this point, she began to keep her distance from Employee. She explained that she did not want anything causing her to lose her job. Bryant stated that she felt threatened by the incident that occurred when she was pregnant.

**Employee’s Case in Chief**

**1. Everett Thompson (Transcript pages 144-146).**

Everett Thompson (“Thompson”) works for the Metropolitan Police Department in the Second District. She knows Employee through walking on 7<sup>th</sup> Street in Chinatown. She has observed Employee doing her job. Thompson testified that people have talked rudely towards Employee. She stated that Employee handled the situation with professionalism and in the way she was trained to handle the situation.

**2. Louis Burton (Transcript pages 146-147).**

Louis Burton (“Burton”) works for the Federal Bureau of Investigation (F.B.I). He knows Employee from working in the 7<sup>th</sup> Street area of Washington, D.C. Burton stated that Employee gave tickets to drivers and some drivers would have a little attitude. Burton testified that that Employee was professional and that there was nothing out of order about her reaction.

**3. Cheryl Wilkins (Transcript pages 148-188)**

On January 14, 2013, Cheryl Wilkins (“Employee”) was employed at the D.C. Parking Enforcement Services. She was a parking enforcement officer. Employee stated that she received training on how to enforce the laws of the District. She was also trained on how to diffuse a situation if she came in contact with a customer. She was trained on customer service and diversity.

With regard to the training on diffusing a situation, Employee stated that the Metropolitan Police Department police trained her on this issue. She stated that if there was a situation where a customer was being combative, she had the right to put her hands up and move back. Employee testified that she was trained to let the person know that she would not engage them. She explained that she had to move back and away from the situation so that she could observe the situation and not become combative.

According to Employee, on January 14, 2013 at 9:34 p.m., Employee was working in the Columbia Heights area, which is from 15<sup>th</sup> Street to New Hampshire Avenue. She explained that Park Road to Harvard was her boundary. She noted that she would observe the parking signs and enforce the information that was posted. Employee testified that this area was a high traffic area. Her tour of duty was from 2 p.m. to 10 p.m. Employee explained that she had to patrol the area and observe the cars. She explained that she had to put the car information in her handheld equipment. She had to observe any people violating general violations, fire hydrants, no parking or standing signs, and bus zones.

Employee testified that as she was coming from Park Road and proceeded toward 11<sup>th</sup> Street, she observed a vehicle parked and unoccupied. She stated that it was dark, so she got out of the car to observe the sign clearly. Then, she issued a citation. As she issued the citation, a gentleman came from her left and asked her about the ticket. She asked him if it was his car and he identified the vehicle. He asked Employee why she was writing him a ticket. She explained why she was issuing him a citation. Employee stated that the driver conceded to the ticket. As she was writing the ticket, the driver left. When he came back, Employee testified that some gentlemen were with the driver and they were yelling and screaming. She stated that they were calling her a bitch and asking her what she was doing. Employee stated that she did not know what they were going to do, so she stood by her vehicle and stopped writing the ticket. She explained that the men were very irate and were using foul language. The men stated that they would “have her job.” She stated that the men appeared to be inebriated. Then, she gave the driver the ticket and left. Employee stated that the driver’s demeanor was not irate and he was not yelling. She did not feel that she needed to converse with the gentlemen because they were irate and she felt threatened by the men.

When Employee returned to Agency, she informed them of the situation and wrote a statement. She explained that she wanted to cover herself. She testified that Mr. DeYoung’s testimony regarding other people being in the vehicle while the incident was occurring was incorrect. Employee testified that she did not respond to the irate men because she was trained to not respond and to try to diffuse the situation. She stated that she did not want to engage them because she did not know what they were going to do. She explained that she was not trying to ignore the men. She stated that she was trained to not respond to passengers because that would escalate the situation. In her report to Agency, Employee did not document that the men appeared to be inebriated.

Employee has worked for Agency since 2005. Employee is aware of the fact that her interaction with the public is governed by the standard operating procedures for parking officers and supervisory parking officers. She explained that she diffused the incident by being courteous to the driver, issuing the ticket and removing herself from the situation. Employee testified that she did not have a dialogue with the men and she was not rude to them.

### **Analysis**

Employee was employed with Agency as a Parking Enforcement Officer from 2005, to 2013, when she was terminated. On January 14, 2013, Employee was in the process of issuing a parking ticket to an Uber driver at the intersection of 11<sup>th</sup> Street and Park road, Northwest, Washington, DC, when the driver of the Uber walked up to Employee and indicated that the Uber car belonged to him. The Uber driver returned to the car. Upon informing the passengers who were already in the car that Employee was giving him a ticket for parking violation, the driver of the Uber and four of his passengers approached Employee. The Uber driver and the four passengers attempted to explain to Employee that



the driver was not parked, but rather stopped to pick up the passengers from across the street. As they approached Employee and started talking, Employee held her hand up to the four passengers. Employee proceeded to issuing the parking ticket to the Uber driver.

Employee informed her supervisor of the incident when she returned to the building, and she voluntarily wrote a statement detailing what happened on January 14, 2013.<sup>3</sup> Thereafter, DeYoung filed a complaint of the incident with the D.C. Metropolitan Police Department (“MPD”) alleging that Employee was rude; completely unreasonable; refused to discuss the issue; she stated that “I’m not talking to you”; and that her behavior was improper and impertinent. DeYoung further stated that Employee’s conduct was outrageous and excessive.<sup>4</sup> The complaint was forwarded to Agency, and Agency contacted the other three passengers of the Uber car.

The other three passengers provided written statements to Agency as well. Passenger Armstrong stated that when they asked Employee why she was writing the Uber driver a ticket, she held up her hand and stated that she was not talking to them. He went on to note that he felt that Employee’s behavior was rude, unprofessional, and unbecoming an officer of the department.<sup>5</sup> Passenger Dobberowsky stated that when they tried explaining to Employee that the Uber car was picking them up, and it wasn’t parked, Employee held up her hand and told them that she was not talking to them. He explained that Employee refused to discuss anything with them beyond that, and that her tone and manner was rude and precluded any sort of reasonable discussion.<sup>6</sup> Passenger Piersma noted in his written statement that Employee was over zealous, rude, and would not talk to them.<sup>7</sup> Agency obtained a copy of the parking ticket that Employee issued to the Uber driver, and ultimately decided that the ticket was unwarranted, thus, it was invalidated. Subsequently, on February 6, 2013, Agency issued a fifteen (15) day Advance Written Notice of Proposed Removal to Employee for the following causes of action:<sup>8</sup>

- 1) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: discourteous treatment of public and violation of employee conduct standard and operating procedures; and
- 2) Any on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious, specifically rudeness.

The February 6, 2013 notice also advised Employee of her rights to respond within six (6) days of receipt of the notice, as well as her right to an administrative review by a Hearing Officer. Employee submitted a response<sup>9</sup>, and on March 13, 2013, the Hearing Officer issued her report upholding Agency’s decision to terminate Employee.<sup>10</sup> Thereafter, on March 19, 2013, Agency issued its Notice of

---

<sup>3</sup> Agency’s Answer at Tab 22 (May 29, 2013).

<sup>4</sup> *Id.* at Tab 23.

<sup>5</sup> *Id.* at Tab 24.

<sup>6</sup> *Id.* at Tab 25.

<sup>7</sup> *Id.* at Tab 26.

<sup>8</sup> *Id.* at Tab 28.

<sup>9</sup> *Id.* at Tab 29.

<sup>10</sup> *Id.* at Tab 30.

Final Decision on Proposed Removal, informing Employee that she would be terminated from her position as a Parking Enforcement Officer effective March 29, 2015.<sup>11</sup>

***1) Whether Employee's action constituted cause for termination***

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Further, DPM § 1603.2 provides that disciplinary action against an employee may only be taken for cause. According to the record, Agency's decision to terminate Employee was based on the following causes of action: 1) any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: discourteous treatment of the public and violation of employee conduct standard and operating procedures ("SOP"); and 2) Any on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious, specifically rudeness.

***Discourteous treatment of the public and violation of Employee SOP***

Section 16 (Public Contact) of Agency's Employee SOP sets forth a set of guidelines a Parking Enforcement Officer should follow when dealing with the public. The SOP provide in pertinent part as follows:

16.2 POs encounter a wide range of contact with the public from abusive treatment by ticketed drivers to tourist seeking direction to points of interest in the Nation's Capital.

16.3 POs *must* maintain their composure under severe harassment and make sustained efforts to diffuse such situations. Courtesy and good judgment *must* be displayed in a variety of situations and circumstances (emphasis added).

16.4 POs will radio for assistance when threatened with bodily harm or where an unusual intense persistent reaction by the public exists to the enforcement of parking violation. ...

16.7 Customers should be handled with the highest level of customer service by all PEMA employees. Employees are expected to adhere to all aspects of the following standards: ...

b) Use courtesy/etiquette...

4) if already assisting a customer, do acknowledge the presence of another who may need your attention by at least making eye contact Use customer-friendly tone of voice, gesture and facial expressions.

In the instant matter, there is evidence in the record to show that when confronted by the four passengers and the Uber driver, who were all members of the public and Employee's customers, Employee's conduct violated section 16 of the SOP as well as 6-B DCMR 1603.3(f)(9). Employee

---

<sup>11</sup> *Id.* at Tab 31. Because the causes of action listed in the Notice of Final Agency Decision do not question the validity of the ticket issued by Employee on January 14, 2013, this matter will not be addressed.

admitted during the Evidentiary Hearing that when confronted by the four passengers, she held up her hand to them. Employee's statement is corroborated by three of the four passengers. Employee also testified that in order to diffuse the situation, she did not speak to, or engage any of the four passengers. DeYoung testified that after Employee stated that "I'm not talking to you"; she ignored all of their inquiries and wouldn't even look up. Passenger Armstrong and Passenger Dobberowsky also provided in their written statements that Employee stated she was not talking to them while they were attempting to explain the situation to her. Employee's refusal to have any communication whatsoever with the four passengers who were members of the public either by holding up her hand or by simply ignoring them is not only a violation of the SOP, but also a failure to give assistance to the public.

Additionally, Employee testified that she was scared of what the four passengers would do to her because they were cursing at her and looked inebriated. Pursuant to SOP section 16.2, when faced with severe harassment, Employee was required to maintain her composure and make efforts to diffuse the situation. Employee stated that holding up her hand to the four passengers and ignoring them was her way of diffusing the situation. However, I find that by ignoring the passengers, Employee failed to assist them. Moreover, I further find that by holding up her hand to them and refusing to speak to the passengers, Employee failed to treat them with courtesy. I further find that Employee's failure to show courtesy to the passengers in violation of Agency's standards is sufficient cause for an adverse action. Also, Employee had the opportunity to radio for assistance if she felt physically threatened or there was an unusual intense persistent reaction by the passengers to the enforcement of parking violation after she attempted to assist them. There is no evidence in the record that Employee radioed for assistant.

Furthermore, on October 16, 2008, Agency's Director issued a memorandum to all Agency employees titled Employee Conduct on the Job – Amended to include additional acts. This memorandum highlighted several acts which Agency considered unacceptable and employee engaged in these prohibited acts would face disciplinary action. Discourteous treatment of the public was also included in this memorandum as one of the unacceptable acts that would result in immediate disciplinary action. Based on the following, I find that Employee's conduct on January 14, 2013, was also in violation of this memorandum and consequently, there is sufficient evidence in the record to support this specification. Accordingly, I further find that Agency has met its burden of proof with regards to this specification and therefore, Agency can utilize this charge to institute adverse action against Employee.

### ***Rudeness***

Employee was also charged with rudeness. Employee admitted that she held up her hand to the passengers and ignored them. Here, I find that Employee was rude to the four passengers on January 14, 2013. Her action of holding up her hand and ignoring the passengers when the passengers were attempting to talk to her was a rude gesture. Holding up one's hand when another person is attempting to speak to you is generally interpreted by society to mean "I don't want to talk to you", or "go away", or "stop talking", or "shut up". Employee testified that she held up her hand as the passengers were talking to her. She explained that she was trained by a Metropolitan Police Department Officer to hold up her hand when dealing with irate members of the public. However, Employee has not provided this office with any evidence in support of this assertion. Further, all four passengers stated that they felt that Employee's behavior was rude. Passenger Dobberowsky also noted that Employee's tone and manner was rude and precluded any sort of reasonable discussion. Based on Employee's action of holding up

her hand while the passengers were attempting to talk to her, coupled with the passengers' statement, I find that there is sufficient evidence in the record to support Agency's assertion that Employee was rude to the passengers. I further find that Agency has met its burden of proof with regards to this specification and therefore, Agency can utilize this charge to institute adverse action against Employee.

**2) *If so, whether the penalty of termination is within the range allowed by law, rules, or regulations***

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).<sup>12</sup> 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 ("TAP"); 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 failed to consider relevant factors or the imposed penalty constitutes an abuse of discretion.<sup>13</sup> Agency presented evidence that it considered relevant factors as outlined in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), in reaching the decision to remove Employee.<sup>14</sup>

---

<sup>12</sup> See also *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 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).

<sup>13</sup> *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).

<sup>14</sup> The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 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
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

When an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment.<sup>15</sup> The penalty for violating [a]ny on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: Failure to give assistance to the public – discourteous treatment of the public is found in § 1619.1(6)(i). The Table of Appropriate Penalties recommended penalty for a first time offense under this section in 2013 was reprimand to suspension for up to ten (10) days; the penalty for the second offense was suspension for fifteen (15) to twenty-five (25) days; and the penalty for the third offense was suspension for thirty (30) days to removal. Because this is Employee's second offense under this cause of action,<sup>16</sup> I find that the penalty of removal is not within the range of penalties allowed under DPM 1619.1(6)(i). Consequently, the penalty for this cause of action will be adjusted to a twenty-five (25) days suspension.

With regards to the second cause of action: [a]ny on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious, specifically rudeness, the penalty for violating this cause of action is found in DPM § 1619.1(7). The Table of Appropriate Penalties recommended penalty for a first time offense under this section in 2013 was reprimand to suspension for up to fifteen (15) days; the penalty for the second offense was suspension for twenty (20) to thirty (30) days; and the penalty for the third offense was removal. The record shows that this is Employee's third offense under this cause of action. On January 18, 2011, Agency issued its Notice of Final Decision wherein, Employee was issued an official reprimand for violating this cause of action.<sup>17</sup> Thereafter, on September 7, 2012, Agency issued a Final Decision wherein, Employee was suspended for fifteen (15) days for violating this cause of act.<sup>18</sup> Because this is Employee's third offense under this cause of action, I find that Agency engaged in progressive discipline and the penalty of removal is within the range of penalties allowed under DPM § 1619.1(7).

In reaching the decision to remove Employee, Agency gave credence to the nature and seriousness of the offense; notoriety of the offense on the reputation of the Agency; Employee's past disciplinary record and her past work record; and mitigating and aggravating circumstances.<sup>19</sup> Although Agency can only suspend Employee for up to twenty-five (25) days for violating 6-B § 1603.3(f)(9), in accordance with DPM § 1619.1(7), I conclude that Agency nonetheless, had sufficient cause to remove Employee for violating 6-B DCMR § 1603.3(g). Agency has properly exercised its managerial discretion and its chosen penalty of removal is reasonable and is clearly not an error of judgment. Accordingly, I further conclude that Agency's action should be upheld.

---

<sup>15</sup> *Id.*; See also *Hutchinson, supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995).

<sup>16</sup> Agency's Answer at Tab 12.

<sup>17</sup> Agency's Answer at Tab 10.

<sup>18</sup> Agency's Answer at Tab 20.

<sup>19</sup> Agency's Answer at Tab 30, *supra*.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of terminating Employee is **UPHELD**.

FOR THE OFFICE:

---

MONICA DOHNJI, Esq.  
Administrative Judge