THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SARAH GUARIN,	)	OEA Matter No. 1601-0299-10
Employee	)	
	)	Date of Issuance: October 28, 2014
D.C. METROPOLITAN POLICE	)	
DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sarah Guarin ("Employee") worked as a Police Officer with the D.C. Metropolitan Police Department ("Agency"). On June 9, 2009, Agency issued a Notice of Proposed Adverse Action to Employee informing her that due to her actions in an incident that occurred on February 2, 2009, she would be terminated from her position.[1] Agency charged Employee with being involved in the commission of any act which would constitute a crime; conduct that is prejudicial to the reputation and good order of the police force; and being under the influence of an alcoholic beverage while off duty. After a departmental hearing was held, Agency issued its

[1] The notice explained that on February 2, 2009, police officers in Prince George's County, Maryland responded to a domestic incident involving Employee and Michael Mocca, another Agency police officer. A criminal summons was subsequently issued to Employee, charging her with second degree assault against Mr. Mocca. The notice also stated that prior to the police officers' departure from Mr. Mocca's residence, Employee was instructed not to drive due to her level of intoxication. Employee was eventually taken to the hospital under a Petition for Emergency Evaluation after the police were informed that she was going to commit suicide. *Petition for Appeal,* p. 59-60 (April 26, 2010).

Final Notice of Proposed Adverse Action, wherein an Adverse Action Panel ("the Panel") found Employee guilty of all charges. Employee later appealed the Panel's decision to the Chief of Police, who ultimately denied the appeal. As a result, Employee was removed from service.[2]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on April 26, 2010. She asserted that the Chief of Police failed to timely respond to her appeal of the Panel's determination. Therefore, she requested an injunction barring termination until OEA decided the matter. As relief, Employee sought reinstatement with back pay and benefits, attorney's fees and costs, and compensatory damages.[3]

The assigned OEA Administrative Judge ("AJ") scheduled a Pre-hearing Conference and ordered the parties to submit Pre-hearing Statements.[4] In Employee's Pre-hearing Statement, she provided that Agency's action of terminating her was improper. She explained that Agency's charges and specifications did not constitute cause and the evidence submitted did not prove misconduct. Additionally, Employee claimed that the Chief of Police's failure to timely respond to her appeal was not harmless error.[5]

In its Pre-hearing Statement, Agency explained that its action was in accordance with D.C. Official Code § 1-616.51 and the District Personnel Manual ("DPM"). It asserted that the *Douglas* Factors[6] were applied during its departmental hearing, and consequently, it was determined that removal was the proper penalty in this matter. Moreover, Agency contended that the conditions provided in *D.C. Metropolitan Police Department v. Elton L. Pinkard,* 801 A.2d 86 (D.C. 2002) were met, and therefore, an OEA hearing was not warranted in this case.[7]

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[2] *Id.,* 5-6.
[3] *Id.,* 3-4.
[4] *Order Convening a Pre-hearing Conference* (August 7, 2012).
[5] *Pre-hearing Statement of Employee,* p. 4 (August 29, 2012).
[6] These factors are outlined in *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981).
[7] Under *Pinkard,* the following conditions needed to be met to prevent a *de novo* hearing:

1. The appellant is an employee of the Metropolitan Police Department or the D.C. Fire and Emergency

Accordingly, Agency requested that OEA affirm its decision.[8]

Thereafter, the AJ issued an Order stating that under *Pinkard*, OEA's review of the matter was limited to whether the Panel's decision was supported by substantial evidence; whether there was harmful procedural error; or whether Agency's action was in accordance with applicable laws and regulations. Accordingly, he ordered Employee to submit the transcripts of the court proceeding. He also ordered the parties to submit briefs addressing *Pinkard*.[9]

Agency's brief provided that its decision was based on substantial evidence; there was no procedural error; and the penalty was appropriate. Agency explained that the Panel's conclusions and findings for the charges were based on evidence obtained through credible witness testimony. With regard to the Chief of Police's untimely response to Employee's appeal, Agency provided that the error was harmless. Agency claimed that in accordance with the collective bargaining agreement, the Chief of Police was supposed to issue her decision within fifteen business days. However, the Chief's decision was issued within twenty-nine days. Agency contended that although the decision was issued fourteen days late, a rescission of the termination for a failure to timely respond to an appeal was not authorized by its collective bargaining agreement. Additionally, it claimed that Employee was not prejudiced by the delay. Therefore, Agency argued that reinstatement would violate public policy.[10] Lastly, Agency

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Medical Services Department;
2. The employee has been subjected to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard* . . .; and
5. At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse being taken against Employee.

[8] *Agency's Pre-hearing Statement,* p. 2-4 (August 30, 2012).
[9] *Order Requiring Parties to Submit Briefs* (September 17, 2012).
[10] Agency cited to the Superior Court for the District of Columbia decision in *Metropolitan Police Department v. District of Columbia Public Employee Relations Board,* 01 MPA 19 (September 11, 2002) ("Brown") to bolster its argument. It asserted that the Superior Court held that there is no language in the collective bargaining agreement that expressly grants the authority to remedy the Chief of Police's violation of the fifteen-day rule. The court in

reiterated that the Panel's decision was based on a careful analysis of the *Douglas* Factors and was reasonable.[11]

In Employee's brief, she provided that Agency's action was procedurally deficient. Employee reasoned that because the Chief failed to respond to her appeal in a timely manner, the adverse action was void.[12] In addition, she argued that Agency's charges were fatally deficient and that its conclusions were not supported by substantial evidence.[13] Therefore, Employee requested that Agency's action be reversed.[14]

The AJ issued his Initial Decision on May 24, 2013, and found that because all of the conditions of *Pinkard* were met, he had to defer to the Panel's credibility determinations. The AJ further concluded that ". . . all of the testimony overwhelmingly depicted Employee as the aggressor during the [June 2, 2009] incident" and that the Panel's findings were supported by substantial evidence. As a result, the AJ did not disturb Agency's penalty selection.[15]

As for the harmful procedural error issue, the AJ found that Agency's delay in

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Brown held that agency committed harmless error by violating the 15-day rule, and it found that agency's failure to timely respond did not violate the employee's due process rights or affect agency's decision to terminate him. Furthermore, the court held that only if a remedy is designed to correct the particular breach by an offending party must the remedy be upheld. The court found in *Brown* that the delay by the Chief of Police was a delay in employee's termination, and as a result, the employee in that matter received an additional five months of pay due to the Chief's delay. *Agency's Brief,* p. 13-16 (November 19, 2012) and *Agency's Reply Brief*, p. 2-4 (January 14, 2013).

[11] *Agency's Brief,* p. 4-16 (November 19, 2012).

[12] Employee relied on *Metropolitan Police Department v. District of Columbia Public Employee Relations Board*, 901 A.2d 784 (D.C. 2006) ("Fisher"). She provided that in *Fisher*, the D.C. Court of Appeals held that an agency's violation of the fifty-five day rule was not harmless error if an employee could prove prejudice or harm from the delay. Employee argued that the same logic could be applicable to the fifteen-day rule. *Brief of Employee,* p. 11-12 (December 21, 2012).

[13] For the first charge, Employee provided that Agency did not allege any conduct that constituted criminal assault. Employee explained that a criminal summons did not constitute cause as defined under the Comprehensive Merit Personnel Act or Agency's General Order. She submitted that the Panel's conclusion did not make any findings with regard to the incidents that occurred on June 2, 2009. As for the second charge, Employee provided that being taken into custody for a medical evaluation did not constitute misconduct. Lastly, Employee provided that Agency's specification for the third charge did not allege that she was intoxicated, but rather, she was instructed not to drive due to her level of intoxication. Employee argued that there was no evidence in the record to prove that she was under the influence of alcohol. *Id.*, 15-33.

[14] *Brief of Employee*, p. 9-33 (December 21, 2012).

[15] *Initial Decision,* p. 10-11 (May 24, 2013).

responding to Employee's appeal was not "extraordinary," as defined in *D.C. Metropolitan Police Department v. D.C. Public Employee Relations Board*, 901 A.2d 784 (D.C. 2006). Further, he explained that Employee did not present evidence of the harm she suffered as a result of the Chief's failure to timely respond to her appeal. Lastly, the AJ found that the Panel considered all of the *Douglas* Factors. Accordingly, Agency's action was upheld.[16]

On June 25, 2013, Employee filed a Petition for Review with the OEA Board. She argues that the AJ's decision misapplied the harmless procedural error analysis; the decision failed to properly address the deficiencies in Agency's charges and specifications; and the AJ failed to consider all relevant evidence.[17] Therefore, Employee believes that the AJ's decision and Agency's action must be reversed.[18]

In its Answer to the Petition for Review, Agency argues that the AJ's decision to utilize the harmless procedural error analysis was in accordance with the law. Agency went on to provide that " . . . the OEA Board has routinely characterized deadlines set within the [Collective Bargaining Agreement] as procedural."[19] Agency provides, *inter alia*, that its charges and specifications were not deficient and that it provided Employee with notice of the charges. Lastly, Agency contends that its decision was based on all relevant evidence.[20] Therefore, Agency requests that the Petition for Review be denied.[21]

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[16] *Id.*, 15-20.
[17] First, Employee explains that the fifteen-day time limit imposed on the Chief was a contractual, substantive due process property right, not a policy or procedure that was subject to the harmful procedural error standard. Employee also claims that the AJ's assertions with regard to an attempt to commit suicide were beyond the scope of the OEA proceeding. In addition, she asserts that the AJ's decision with regard to the intoxication charge was not based on Agency's specification for the charge. Lastly, Employee submits that the AJ's lack of consideration for the February 13, 2009 Prince George's County Court Peace Order trial was factually and legally incorrect.
[18] *Petition for Review* (June 25, 2013).
[19] *Agency's Reply Brief to Employee's Petition for Review,* p. 9 (July 30, 2013). Agency provides that the case law relied on by Employee lacks merit. Furthermore, Agency submits that Employee failed to show how the delay in responding to her appeal was prejudicial.
[20] Agency noted that because the February 13, 2009 Prince George's County Court Peace Order trial transcript was not an available exhibit during the departmental hearing, the AJ could not consider it.
[21] *Id.*, 12-26.

Harmless Procedural Error

OEA Rule 631.3 defines harmless procedural error as "an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action." Employee and Agency offer two distinctly different court decisions to argue their positions regarding the error committed by the Chief's delayed response to Employee's appeal. Employee relies on the *Fisher* case, and Agency contends that *Brown* is the decision that most closely mirrors the facts presented in this case.

The *Fisher* decision focused solely on Article 12, Section 6 of Agency's collective bargaining agreement. This section provides that "the employee shall be given a written decision . . . no later than fifty-five (55) business days after the date the employee is notified in writing of the charges or the date the employee elects to have a departmental hearing . . . ." In the *Fisher* decision, the court reasoned that "the delay was 'extraordinary,' considering that 'roughly 600 days' had elapsed between the beginning and end of the evidentiary hearing -- a delay marked by 'six continuances,' only one of which the employee had sought." Therefore, it ruled to reinstate the employee in that matter.

However, the *Brown* case specifically addressed Article 12, Section 7 of the collective bargaining agreement. This section of the agreement provides the following:

> The employee shall be given fifteen (15) days advance notice in writing prior to the taking of adverse action. Upon receipt of this notice, the employee may within ten (10) business days appeal the action to the Chief of Police. The Chief of Police shall respond to the employee's appeal within fifteen (15) business days. In cases in which a timely appeal is filed, the adverse action shall not be taken until the Chief of Police has replied to the appeal. The reply of the Chief of Police will be the final agency action on the adverse action.[22]

[22] *Brief of Employee*, Exhibit #1 (December 21, 2012).

In *Brown*, the Superior Court ruled that it was harmless procedural error when the Chief failed to render a decision five months after the appeal. The court reasoned that under the terms of the collective bargaining agreement, ". . . the penalty for delay in the Chief responding is a delay in termination."[23]

In the current matter, because Employee properly appealed her decision to the Chief, no final decision of adverse action was issued until the Chief's decision was rendered on April 19, 2010. Although this was fourteen days past the fifteen business day deadline, as the AJ reasoned, there was no harm to Employee. Similar to the employee in *Brown*, Employee was not actually terminated until the Chief issued her decision. The Chief's fourteen-day delay resulted in Employee remaining under Agency's employ for an additional fourteen days.

The *Brown* court also addressed the harmful procedural error rule. The court explained that "harm to an employee from a procedural error is typically found in the context of an employment termination case where an employee was terminated without due process."[24] It went on to provide that "the harmful error standard prohibits consideration of any violation that did not affect 'the result of the agency's decision to take the disciplinary action against the individual employee (citing *Cornelius v. Nutt,* 472 U.S. 648 (1985)."[25] Therefore, it ruled that agency's failure to timely respond did not deprive employee of due process or affect the decision to terminate him. Agency's failure did not violate any substantive right of the employee. Therefore, the error was harmless procedural error.

Similar to the employee in *Brown*, Employee did not prove that she was deprived of due process. The record does not indicate how she was prejudiced by Agency's delay. Moreover,

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[23] *Metropolitan Police Department v. District of Columbia Public Employee Relations Board*, 01 MPA 19, p. 8 (September 11, 2002) found in *Agency's Brief,* Exhibit #1 (November 19, 2012).
[24] *Id.*, 8-9.
[25] *Id.* at 9.

the delay did not impact Agency's decision to terminate her. Employee benefited from Agency's delay because it postponed her termination for fourteen days. As a result, this Board supports the AJ's determination that Agency's violation was harmless procedural error.

Cause of Action

Agency charged Employee with the commission of any act which would constitute a crime; conduct that is prejudicial to the reputation and good order of the police force; and being under the influence of an alcoholic beverage while off duty. The relevant sections of Agency General Order 120.21, Table of Penalties provides the following:

> Conduct described . . . is prohibited, and shall serve as the basis for an . . . adverse action:
>
> 2. . . . being under the influence of "alcoholic beverage" when off duty.
> 7. . . . involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction.
> 25. any conduct . . . which is prejudicial to the reputation and good order of the police force . . . .

Based on documents present in the record and the testimonies of witnesses, it is clear that Employee's actions met the definition of the three charges levied against her. As will be discussed below, there is substantial evidence in the record to support the AJ's conclusion that Employee violated the sections described above.[26]

I. Alcoholic Beverages

There were several witness testimonies that supported Agency's charge that Employee was under the influence of an alcoholic beverage when off duty. During the Panel hearing, Kimberly Lazzo testified that on the night in question, she witnessed Employee consume wine coolers and Jagermeisters.[27] Michael Mocca admitted to pouring shots of alcohol and

[26] Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *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).
[27] *Agency Answer to Petition for Appeal*, p. 95 (May 27, 2010).

Jagermeister and Red Bull for Employee.[28] Employee's mother, Phyllis Guarin, provided that she and Employee each had a drink while they were out to lunch earlier in the day.[29] Employee admitted to having a glass of wine at lunch and two beers while at Officer Mocca's home.[30] Officers Dahlberg and Bodenhorn both testified that Employee appeared to be intoxicated when they arrived at Mr. Mocca's home to investigate the domestic disturbance.[31] During the trial in Prince George's County, Christina Lazzo also testified that Employee was intoxicated and that her eyes were blood shot and she was slurring her words.[32] Given this evidence, this Board believes that there was substantial evidence to support this charge.

II. Act Which Would Constitute a Crime

To prove its charge of the commission of an act which would constitute a crime, Agency relies on Employee's assault charge against Officer Mocca. Similar to the previous charge, there were witness testimonies regarding Employee's assault of Mr. Mocca.[33] However, the most convincing piece of evidence was the summons charging Employee with second degree assault. Although she was subsequently acquitted, Agency adequately proved, through the corroboration of witness testimony, that Employee engaged in the assault of Mr. Mocca. The finding of guilt was not a requirement for this charge. Agency was only tasked with proving the commission of the act of assault did constitute a crime. Based on the evidence offered, Agency also adequately proved this charge.

III. Reputation of Police Force

Finally, Agency did prove that Employee engaged in conduct which was prejudicial to

[28] *Id.* at 252 and 258.
[29] *Id.* at 323.
[30] *Id.* at 337.
[31] *Agency Answer to Petition for Appeal*, p. 80 and 90-91 (May 27, 2010).
[32] *Employee Response to Scheduling Order*, p. 81 (November 13, 2012).
[33] Christine Lazzo and Michael Mocco both offered testimonies regarding the assault. *Agency Answer to Petition for Appeal*, p. 163, 169-170, and 260 (May 27, 2010).

the reputation of the police force. As the AJ reasoned, Agency is a paramilitary entity whose members are sworn to uphold and defend the laws within the District of Columbia; accordingly, members should conduct themselves in an upright manner.[34] Police Officers from Prince George's County testified that Employee appeared agitated, angry, disheveled, intoxicated, loud, and disorderly.[35] It is this Board's opinion that this was enough to support Agency's claim that Employee's actions prejudiced the reputation of its police force. Thus, Employee's alleged suicide attempt does not have to be considered to substantiate this charge.

As the AJ held, all of the actions described above violate the regulations and policies relied upon by Agency. The record clearly shows that there was substantial evidence to support each charge. Therefore, Agency did adequately prove that cause existed to take action against Employee.

Appropriateness of Penalty

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). According to *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties. The Court 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."[36] As a result,

[34] *Initial Decision,* p. 17 (May 24, 2013).
[35] *Agency Answer to Petition for Appeal,* p. 52, 57, 80, 84, and 91 (May 27, 2010).
[36] *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985). Additionally, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that although selection of a penalty is a management prerogative, the penalty cannot exceed the parameters of reasonableness. Moreover, *Love* citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981), provided the following:

> [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

OEA has consistently held that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[37]

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

When discussing the imposition of penalties, the *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 330 (1981) case provided that "any disciplinary action demands the exercise of responsible judgment so that an employee will not be penalized out of proportion to the character of the offense . . . ." The D.C. Court of Appeals has consistently relied on the Table of Penalties outlined in the DPM when determining the appropriateness of an agency's penalty.[38] In this matter, the Table of Penalties provides the range of penalties for each charge.

For the charge of being under the influence of alcohol while off duty, the range for the first offense is suspension for three days to removal. The range of penalties for a first offense of the commission of any act which would constitute a crime is removal. Finally, the range for the first offense of conduct that is prejudicial to the reputation and good order of the police force is reprimand to removal. Removal was within the range of penalty for all three causes of action. Because the penalty imposed did not exceed the range of punishment permissible under the Table of Penalties, this Board will not disturb Agency's decision to terminate Employee.

> 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.

[37] *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).

[38] *Department of Public Works v. Colbert,* 874 A.2d 353 (D.C. 2005); *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985); *Brown v. Watts*, 993 A.2d 529 (D.C. 2010); *Hutchinson v. D.C. Office of Employee Appeals*, 710 A.2d 227 (D.C. 1998); and *District of Columbia v. Davis*, 685 A.2d 389 (D.C. 1996).

OEA held in *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)), that an agency's decision will not be reversed unless it failed to consider relevant factors or the imposed penalty constitutes an abuse of discretion. The evidence did not establish that the penalty of removal constituted an abuse of discretion. Agency presented evidence that it considered relevant factors as outlined in *Douglas* when arriving at its decision to remove Employee.[39]

Penalty Based on Relevant Factors

The Panel considered all of the *Douglas* factors. They gave great weight to the nature and seriousness of the offense; Employee's job level and type of employment; Employee's past disciplinary record; Employee's past work record; the effects of the offense upon Employee's ability to perform at a satisfactory level and its effect on her supervisors' confidence in her ability to perform assigned tasks; the consistency of the penalty with any applicable agency table

[39] 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 it's 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.

of penalties; the notoriety of the offense or its impact upon the reputation of the agency; the clarity with which Employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; potential for Employee's rehabilitation; mitigating circumstances; and the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.[40]

Based on the aforementioned, there is no clear error in judgment by Agency. There is substantial evidence in the record to support the Panel, the Chief of Police, and the AJ's decisions. Removal was a valid penalty for any of the three causes of action taken against Employee. Moreover, the penalty was based on a consideration of the relevant factors as outlined in *Douglas*. Consequently, we must deny Employee's Petition for Review.

[40] *Agency's Answer to Employee's Petition for Appeal,* p. 438-439 (May 27, 2010).

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is denied.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.