THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
WIDMON BUTLER,	)	
Employee	)	OEA Matter No. 1601-0236-12
	)	OEA Matter No. 1601-0069-14
	)	
v.	)	Date of Issuance: September 28, 2015
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge

David A. Branch, Esq., Employee Representative
Ronald B. Harris, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 5, 2012, Widmon Butler ("Employee") a Claims Examiner at the Police and Fire Clinic, filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the Metropolitan Police Department's ("MPD" or the "Agency") action of suspending him from service for twenty five (25) days based on charges of Insubordination and Misfeasance.[1] This matter was assigned to the undersigned on March 19, 2014. On April 14, 2014, Employee filed another Petition for Appeal for a separate adverse action wherein he was suspended from service for thirty (30) days based on a charge of Insubordination.[2] This matter was assigned to the undersigned on July 18, 2014. Multiple conferences were held in both matters so that the parties would be available and that all salient issues could be efficiently discussed. As a result, on October 23, 2014, I issued an Order Convening Hearing which consolidated both of the above captioned matters for efficient adjudication and scheduled an Evidentiary Hearing for February 5, 2015. The hearing was held as scheduled. Thereafter, on February 25, 2015, I issued an order requiring both parties to submit their written closing

[1] OEA Matter No. 1601-0236-12.
[2] OEA Matter No. 1610-0069-14.

arguments. After a short extension of time was granted, both parties eventually complied with this order. After review, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUE

Whether Agency's action of suspending Employee on two separate occasions was done in accordance with applicable law, rule, or regulation.

Statement of the Charges

On June 21, 2012, Employee was served with a Notice of Proposed Adverse Action (OEA Matter No. 1601-0236-12) in which he was charged as follows:

> **Charge No. 1**:
>
> 1603.3 … (F) "Any on-duty or employment related act or omission that interferes with the efficiency or integrity of government operations, to include … (4) Insubordination;… (6) Misfeasance.
>
> Specification No. 1: In that, on March 6, 2012, you emailed Diana Haines, Director, of the Human Resources Management Division, to complain about a PD-42 (Injury and Illness Report) decision that was

made by William Sarvis, Director, of the Medical Services Division without first consulting him (Director Sarvis) as directed. You were previously directed by Director Sarvis verbally and in writing with regards to following the chain-of-command first, prior to going outside the chain. Additionally, you acknowledged that you understood the directive given; however, you knowingly violated Director Sarvis' policy without justifiable cause.

Specification No. 2: In that, on March 6, 2012, you emailed Diana Haines surrounding the circumstances regarding the decision and your involvement in a PD 42. In the email you deliberately and disingenuously misstated facts in an attempt to deceive and bolster your position with regards to your compliant and opposition of the ruling. In addition, in the email you deceptively asserted comments allegedly made by Dr. Roxana Diba regarding her medical opinion with regards to the case; that were erroneous. Your actions were unacceptable and inappropriate.

On December 16, 2013, Employee was served with a Notice of Proposed Adverse Action (OEA Matter No. 1601-0069-14) in which he was charged as follows:

Charge No. 1:

1603.3 … (F) "Any on-duty or employment related act or omission that interferes with the efficiency or integrity of government operations, to include … (4) Insubordination…"

Specification No. 1: In that, on August 30, 2013, you were scheduled to go on annual leave which was going to conclude on September 16, 2013. Due to the two (2) week span of you being out on annual leave and the thirty (30) days mandated deadline for "*Workers Compensation Claim Recommendations*;" Lieutenant Gregory Stroud gave you a **direct order** to submit the compensation claims electronically for any needed corrections; prior to you going on annual leave and you failed to follow his directive. In addition, Lieutenant Stroud's directive was overheard and reiterated again by the Medical Services Director William Sarvis prior to the end of your tour of duty; however, you continued to disobey the direct order given without a justifiable cause.

Specification No. 2: During the calendar year of 2012 through calendar year 2013, you received repeated and well founded (*sic*) complaints from your supervisors concerning your negligence as it pertains to your daily assigned tasks; violating Chapter 16, of the D.C. Personnel Manual.

> Clearly, your continue (*sic*) misconduct demonstrates that you have not been receptive to previous discipline.[3]

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

As part of Employee's appeal process, I held an Evidentiary Hearing. During it, the parties had a full and fair opportunity to present their case as to why they should prevail in this matter. I had the opportunity to observe the poise, demeanor, and credibility of all of the witnesses, including Employee (who opted to testify on his own behalf). The following findings of fact, 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 the OEA.

Summary of Relevant Testimony

Dr. Roxana Diba ("Dr. Diba") Transcript pp. 12 - 34

Dr. Diba testified in relevant part that she works at the Police and Fire Clinic ("PFC") as a Staff Physician. Her tenure with the PFC dates back to 2009. Part of her regular on-the-job duties include conducting annual physical exams, wellness exams, injury care, urine drug screen reviews and testifying before the Retirement Board disability hearings. She is board certified in family medicine and occupational and environmental medicine. On rare occasions, she will render a medical opinion in workers' compensation cases.

Dr. Diba worked with Employee, who was a Claims Examiner. On or about May 2012, she recalled Employee emailing her asking her to render a medical opinion on the workers' compensation claim of Sergeant Branson. Initially, Dr. Diba informed Employee that it was not her case and directed him to the treating physicians. She did not recall Employee personally coming to her in order to discuss Sergeant Branson's claim. Dr. Diba testified that in order to render a medical opinion she would have to examine the medical record and the patient. She would never render an opinion based solely off of an email.

On cross examination, Dr. Diba reiterated that she did not recall discussing the matter of Sergeant Branson's workers compensation claim with Employee. When she was confronted by Employee regarding same, she continued to direct him to the treating physician for the answer to his questions.

William B. Sarvis ("Sarvis") Transcript pp 34 – 89 & 154 - 176

Sarvis testified in relevant part that he is currently employed by the MPD as its Director of Medical Services. Prior to his current stint at the PFC, he worked for the Fraternal Order of Police ("FOP") for fourteen years as a labor representative for its members' disability and

[3] Specification No. 2 was not sustained by the Chief of Police and therefore was not used as a basis for suspending Employee in this matter.

workers' compensation claims. Prior to his stint with the FOP, Sarvis worked for the MPD for twenty three years.

As Director of the PFC, Sarvis' duties include overseeing and running the PFC. He is tasked with reviewing workers' compensation claims in order to make a determination on whether those injuries should be designated Performance of Duty ("POD") or Non-Performance of Duty ("NON-POD"). The designation would affect whether the MPD and the District government would compensate the member for their time off and medical bills. Sarvis supervises approximately nine persons. Employee was one of his subordinates. Sarvis testified that Employee's on-the-job duties primarily consisted of him reviewing and making recommendations to Sarvis regarding whether a claim should be designated POD or NON-POD. More specifically, applicable law requires that a determination of POD versus NON-POD on the claim be made within thirty days. Employee was required to make his recommendations to Sarvis in an adequate amount of time so that Sarvis would have an opportunity to review the recommendation and make any changes or corrections as he deemed necessary. Sarvis indicated that Agency protocol required Employee to submit the claims that he has been assigned at least five days before the thirty day due date in order that Sarvis may have enough time to review and make corrections before rendering his determination. Sarvis clarified that he is not bound by the recommendation made by Employee or Employee's colleagues. As Director of PFC, applicable law gives Sarvis sole authority to make a POD determination.

During the events in question (OEA Matter No. 1601-0236-12), the Deputy Director was Lieutenant Mike Stroud, who assisted Sarvis in overseeing the operational aspects of the PFC. Employee directly reported to Lt. Stroud, who in turn directly reported to Sarvis. Sarvis indicated that MPD as a whole is a paramilitary entity wherein sworn members and non-sworn members alike were required to follow the chain of command in order to address and resolve work-related issues. In this matter, chain of command would require Employee herein to go to Lt. Stroud first and then if unable to get an adequate resolution go to Sarvis. Sergeant Branson's POD claim was assigned to Employee. Sarvis recalled admonishing Employee on numerous occasions to follow chain of command with respect to all issues. Sarvis further recalled that in or around November 2011, Employee was "served notice"[4] because he failed to follow chain of command. According to Sarvis, following the chain of command is vitally important because lower level members may not have all of the pertinent information regarding an issue and he wants the opportunity to review the issue before it is raised up the flagpole to his superiors. With respect to a Claims Examiner recommendation submission, Sarvis indicated that a medical opinion should either be attached to the recommendation or at the very least it should be quoted verbatim.

Agency's Exhibit No. 1 was entered into evidence during Sarvis' testimony. It is the Advance Written Notice of a proposed twenty five day suspension given to Employee based on a charge of Insubordination and Misfeasance. Regarding same, Sarvis testified that he worked in close proximity to Employee with their respective offices only a few feet apart from one another. Further, if Employee had any issue that he felt needed addressing, he was more than able to come directly to Sarvis to address the matter before escalating the matter outside of their office.

[4] Transcript at 46.

Sarvis credited Dr. Diba's assertion that she never discussed nor provided a medical opinion to Employee regarding Sergeant Branson's POD claim. Sarvis also stated that Dr. Diba had asked him to instruct Employee to stop attempting to question her regarding this claim.

On cross examination, Sarvis acknowledged that Sergeant Branson and Employee worked in a shared office space. He further acknowledged that Employee had requested that the workers compensation claim be reassigned due to their close working relationship. He further acknowledged that he received an e-mail from Employee requesting same. As part of the POD recommendation, Employee would later have a change of heart and would ask that the recommendation be changed from POD to NON-POD. Employee then sent another e-mail to Sarvis explaining his change of recommendation before Sarvis acted on the initial recommendation and that it had stated in relevant part "consider this my chain of command request."[5] Initially, Sarvis thought that this e-mail was sent on a Sunday during non-business hours. He would not have reviewed this until he had come to work and had an opportunity to review his work e-mails. Sarvis further elaborated that he believed that Employee then went to Diana Haines-Walton, Agency Director of Human resources and Sarvis' supervisor the next morning (Monday). This timeline prevented Sarvis from addressing this matter as part of a normal chain of command issue. Sarvis acknowledged that had Employee waited a few days with no response then it would have been appropriate for Employee to raise this issue with his superiors as part of a chain of command request. What was lacking in the instant case was that Employee's act were done within such a short timeframe (during business hours) that it did not represent a proper chain of command request and therefore Employee had to be disciplined regarding same. However, Sarvis later noted that Employee had contacted Haines-Walton the following Tuesday (two days) after he had not received a response from Sarvis. Given this revelation, Sarvis explained that if Employee had an issue he should have come to him directly the morning after he sent the e-mail before raising the issue with Haines-Walton. Sarvis further explained that Employee's discipline was not based on the recommendation itself but rather on the assertion that Employee violated the chain of command in addressing an issue he had without properly consulting Sarvis first.

Sarvis testified about the facts and circumstances surrounding Agency's Exhibit No. 3 which is the Final Investigative Report dated October 24, 2013. This report cites Employee for Insubordination (OEA Matter No. 1601-0069-14) for failing to submit certain reports in the form and format explicitly mandated by his direct supervisor – Stroud. More specifically, Employee, on the day in question, was scheduled to go out on leave for approximately two weeks. Knowing this, Stroud explicitly instructed Employee to submit his workers compensation recommendations in an editable format (Microsoft Word). Sarvis testified that he overheard Stroud give Employee this direct order. The reasoning behind the order was that if there were any errors or edits that needed to be made before the recommendations were ruled upon, it would be easier for the remaining staff to complete the work while Employee was out on leave. Sarvis also explained that Employee's work product routinely required substantial revisions. Soon after receiving said order, Employee approached Sarvis in an attempt to get Stroud's order countermanded. Sarvis agreed with Stroud and reiterated to Employee that he was required to submit his reports in electronic format at the end of his work day. When Employee departed at

[5] Transcript at 68 – 70.

the end of his work day, he had submitted the claims in hard copy only. During cross examination, Sarvis explained that Employee's recommendations are usually submitted as a hard copy, however, Employee was given a different order for submitting his recommendations specifically due to his anticipated unavailability.

Michael Eldridge ("Eldridge") Transcript pp. 88 - 154

Eldridge testified in relevant part that he is an Inspector with MPD and that he is the Director of the MPD's Disciplinary Review Branch. His duties and responsibilities include reviewing investigations in order to determine if there is preponderance of evidence to sustain the charges. If so, he is then tasked with issuing charges, levying discipline and for drafting the proposed notices sent to MPD employees regarding those charges. Eldridge reviewed the investigative reports associated with Employee's conduct that are part of the instant matters. In crafting an appropriate penalty, Eldridge utilized the *Douglas* factors as well as Employee's prior disciplinary history in assessing the right sanction for Employee's actions.

Widmon Butler ("Employee") Transcript pp. 176 – 280

Employee testified in relevant part that he earned his Bachelor of Arts from Northwestern University and his Juris Doctor from Georgetown University. He also testified that he is a member of the District of Columbia and Pennsylvania Bar associations. At the time of the hearing, Employee was still employed by the MPD as a Claims Examiner/Human Resource Specialist Grade 12. According to Employee, he has worked for the MPD since 2000. He is responsible for reviewing workers compensation claims in order to make a recommendation as to whether the claim was POD or NON-POD. Employee noted that he shared a small office with Sergeant Branson. Employee acknowledged that during the events in question (OEA Matter No. 1601-0236-12), his direct supervisor was Stroud and his second line supervisor was Sarvis. Employee recalled being assigned to process the workers compensation request (PD-42) for Branson. Employee had concerns regarding the appearance of conflict since he worked alongside Branson on a daily basis. In spite of his concerns, Employee was tasked with making a recommendation regarding Branson's claim. Initially, on February 28, 2012, Employee recommended that Branson's claim be deemed POD.[6] He submitted his recommendation to Stroud. However, when he forwarded his recommendation he did not think that Stroud would act on it because the medical opinion was missing. He then proceeded to investigate further by querying the medical staff, including Dr. Diba, about the specifics of the claim. He sent an email to Dr. Diba regarding same but did not receive a response. He then approached Dr. Diba at the clinic to ask her directly why she had not responded. She stated that she did not want to be involved in this matter because she has to work alongside Branson and she did not want to foster any ill will. Employee then proceeded to demonstrate the accident that led to Branson's injury. According to Employee, Dr. Diba stated that it was unlikely that Branson suffered the alleged injury based off of his demonstration.[7] Employee admitted that no one else was present for this alleged conversation that he had with Dr. Diba. He then approached Stroud and discussed his conversation with Dr. Diba and asked to change the PD-42 to NON-POD. Stroud was

[6] See Employee's Exhibit No. 8.
[7] *Id.*

unconvinced and refused to change the recommendation. Employee then attempted to contact Sarvis via e-mail in order to get the recommendation changed. Employee sent this e-mail on a Sunday evening[8] outside of Sarvis' normal tour of duty. The e-mail specifically stated "consider this my chain of command request." Employee then spoke with Sarvis the following morning and was told that his request would be considered but it was unlikely that it would be changed.[9] Employee then sent an e-mail to Haines-Walton repeating his request to have the recommendation changed citing irregularities.[10]

Employee reviewed Exhibit No. 2, which was an e-mail, sent by Dr. Diba indicating that she did not have a conversation with Employee regarding Branson's injury. Employee testified that he was "upset" when he was presented this letter by Stroud during a meeting. Despite this letter, Employee asserts that he did meet with Dr. Diba in a conference room to discuss Branson's claim.

During cross examination, Employee admitted that with respect to his subsequent NON-POD recommendation, he did not include any written medical opinions as part of his analysis. He also acknowledged that pursuant to statute, Sarvis, as the Medical Services Director, is the only one who is authorized to make a POD versus NON-POD determination on a PD-42. He further acknowledged that Sarvis is not bound by Employee's recommended ruling.

With respect to OEA Matter No. 1601-0069-14, Employee testified that on August 30, 2013, he was preparing to go out on leave for two weeks when he was prepping his case load so that it would be ready for review when he left. His normal tour of duty ended at 4:00pm. Approximately two hours before he was scheduled to leave, Stroud approached Employee and told him to submit his case load in electronic format. Employee replied that he was trying to get the claims prepped for submission. He explained that he did not want to submit the claims until they were complete. Employee also noted that he was required to leave at the end of his shift. According to Employee, at approximately 4:05pm he was readying himself to leave and he approached Sarvis and told him that he had not sent electronic copies of his work product to Sarvis but rather had presented hard copies that were left on Stroud's desk. Since Sarvis, at that moment, did not say anything to the contrary about staying until his work was complete, Employee left for his vacation. Employee explained that under normal circumstances, he is required to submit his work product in hard copy format and that if any corrections or revisions are needed he would personally make those edits. Employee did acknowledge that he has, at times, submitted his work product electronically, if he knows he is scheduled to be out of the office.

After Employee returned from his vacation, but before he was scheduled to come back into the office, he contacted the office to let them know that if they needed anything to let him know. He was then contacted by Stroud's assistant who informed him that he needed to reverse one of his decisions. He made the change as requested. Employee also asserted that none of the

[8] This e-mail was sent on March 4, 2012.
[9] This conversation took place on March 5, 2012.
[10] This e-mail was sent on March 6, 2012.

claims in question were past their deadline. On direct examination, he further asserted that he never refused to comply with a direct order.

During cross examination, Employee admitted that he was told by Stroud to submit his work product electronically. Employee posited that Stroud lacked the authority to give him an "order" because he is a civilian member of the MPD.[11]

Analysis & Conclusions of Law

OEA Matter No. 1601-0236-12

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. Under District Personnel Manual ("DPM") §1603(f), the definition of "cause" includes any on duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: 1) insubordination and 2) misfeasance. Insubordination is defined to include refusal to comply with direct orders, accept assignments or detail; and carry out assigned duties and responsibilities.[12] Misfeasance is defined to include careless work performance, providing misleading or inaccurate information to superiors; and dishonesty.[13]

In this matter, Agency has argued that it had cause to discipline Employee as cited herein due to his action of circumventing the chain of command by emailing Haines-Walton concerning his change of heart regarding a PD-42 POD recommendation for his colleague Branson. Sarvis credibly testified that Employee had been previously counseled to adhere to the chain of command with respect to all work related matters. This point was readily corroborated by Employee during his direct and cross testimony. Moreover, Employee admitted that he spoke with Sarvis the morning of March 5, 2012, during which Sarvis acknowledged Employee's concern but noted that the decision on whether Branson's PD-42 would be deemed POD or NON-POD was his alone to make. In spite of this, Employee continued to press his concerns with Sarvis' supervisor, Haines-Walton. Of note, Sarvis and Employee both credibly testified that they both knew that, by law, Sarvis as the Medical Director is the only person authorized to make the PD-42 POD versus NON-POD determination. Employee's duty is to merely provide a recommendation for Sarvis to consider. I find that given the instant circumstances, after sending an e-mail to Sarvis and getting Sarvis' acknowledgement of his concerns, Employee should have ceased his pursuit of getting the determination changed. In doing so, I find that Employee violated the chain of command as alleged by the MPD. I further find that Agency has met its burden of proof with respect to the charge of Insubordination in this matter.

Of more pressing concern to the Undersigned is the charge of Misfeasance. Dr. Diba credibly testified that she was approached by Employee both via e-mail and in person in a failed attempt to get her to provide a medical opinion regarding Branson's PD-42 claim. When

[11] Transcript at 228 – 237.
[12] DPM § 1619.6(d).
[13] DPM § 1619.6(f).

Employee approached Dr. Diba in person, after she failed to respond to his e-mail, Dr. Diba testified that she refused to give Employee a medical opinion based on Employee's reenactment of Branson's injury. She did this primarily because the case was not assigned to her and because she did not have the opportunity to examine Branson. In contrast, Employee alleges that Dr. Diba noted that she had concerns with getting involved with a colleagues claim but nevertheless when approached she reluctantly gave Employee her medical opinion to reject Branson's PD-42 claim, orally, with the caveat that she not be mentioned in the PD-42 recommendation that Employee was preparing to revise. Employee then alleges that he included Dr. Diba's oral assessment, without her attribution, in his revised PD-42. He then attempted to submit same to Stroud, then Sarvis, and then finally Haines-Walton.

During the evidentiary hearing I had the opportunity to observe the demeanor, poise, and credibility of Dr. Diba. I find that her testimony relative to this matter to be both credible and persuasive. I also had the opportunity to observe the demeanor, poise, and credibility of Employee. I find that his testimony relative to this matter to be both unbelievable and self-serving. I note that an administrative judge must find facts and in that capacity must assess the credibility of witnesses. *Dell v. Department of Employment Services*, 499 A.2d 102 (D.C. 1985). To assess the credibility of witnesses, the Administrative judge can consider the demeanor and character of the witness, the inherent impossibility of the witness's version, the witness's bias or lack of bias, inconsistent statements of the witness and the witness's opportunity and capacity to observe the event or act at issue. *Hillen v. Department of the Army*, 35 M.S.P.R. 453, 7-8 (1987). Employee would have the undersigned believe that he was able to get a board certified Doctor to give him a medical opinion for a patient that she did not personally examine so that he could get a recommendation that he himself had already submitted, revised. I find that Employee's rendition of events is wholly unfathomable. I find that Dr. Diba did not provide Employee with a medical opinion regarding Branson's PD-42 either orally or in writing. I also find that when Employee, under pressure to substantiate his revised recommendation, involved Dr. Diba in this matter, mislead (at best) Stroud, Sarvis and Haines-Walton as to validity of his (revised) recommendation. Accordingly, I further find that Agency has met its burden of proof with respect to the charge of Misfeasance in this matter.

In reviewing Agency's decision to suspend Employee, OEA may look to the Table of Appropriate Penalties. Chapter 16 of the DPM outlines the Table of Penalties for various causes of adverse actions taken against District government employees. The penalty for "[a]ny on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: insubordination and misfeasance in the DPM. The acceptable penalties for a second offense for Insubordination and Misfeasance range from fifteen (15) to thirty (30) days suspension. According to Eldridge's credible testimony, this was the fourth occasion that Employee had misconduct sustained against him. Employee's conduct constitutes an on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations and it is consistent with the languages of the DPM. Therefore, I find that by suspending Employee for twenty five days, MPD did not abuse its discretion.

1601-0069-14

In this matter, on August 30, 2013, Employee was preparing to go on extended leave.

Prior to his leaving, he was directed by Stroud, to leave copies of his PD-42 claim recommendations in MS-Word format in order for Stroud to make edits, if necessary, in Employee's absence. Shortly after this order was given, Employee approached clinic director Sarvis and attempted to have him countermand Stroud's order. Sarvis had overheard Stroud's order to Employee and told Employee that he was to obey the order. Employee then went on leave and failed to comply with Stroud's order as well as Sarvis' order. Initially, MPD proposed to terminate Employee due to his insubordination. However, the Deciding Official reduced the Hearing Official's decision from termination to a thirty (30) day suspension without pay and dismissed Charge One, Specification Two, without prejudice.

Sarvis testified that he overheard Stroud give Employee the aforementioned order and that Employee subsequently attempted to have the order countermanded. However, in response, Sarvis reiterated the order. Employee admitted as much when he testified. Employee attempted to explain his actions by stating that under normal circumstances he is to submit his recommendation in hard copy and that, if necessary, he would make any edits or revisions requested by Stroud or Sarvis. Incredibly, Employee also admitted that he has, on occasion, submitted his work product electronically, if he knows that he is not going to be in the office for an extended period of time. Employee also proffers that he is forbidden from staying past his regular tour of duty. Employee also contends that since he told Sarvis that he was leaving without submitting his work product electronically but rather in hard copy, that his conduct should be excused. Employee further contends that no harm came of his failure to provide electronic copies of work product because he made himself available to MPD while on leave to make any corrections or revisions before the statutory time limits for the PD-42's were tolled.

Again, I find Employee's contentions unpersuasive. Employee would have the undersigned believe that it was harder for him to send an e-mail to either Stroud or Sarvis with electronic versions of his work product attached versus leaving hard copies of same on Stroud's desk. Employee admitted that in the past, on just this type of occasion, he has left electronic copies of his work product so that the mission of his Agency can continue unabated. But for some reason, on the occasion in question, he refused to make electronic copies after receiving a direct order. Employee even had the audacity, when questioned by the Undersigned, to posit that his supervisors (Stroud and Sarvis) cannot give him "orders" because he is a civilian member of the MPD.[14] I credit Sarvis testimony as being forthright and credible. Of note, Employee (whether unwittingly or not) admitted to the salient part of this charge and specification. I further note that the explanations provided by Employee for this matter were self-serving and generally untrustworthy. Notwithstanding Employee's arguments to the contrary, I find that Employee disobeyed a direct order from his supervisors when he failed to leave electronic copies of his work product prior to going out on annual leave. Accordingly, I further find that Agency has met its burden of proof with respect to this second charge of Insubordination in this consolidated matter.

As noted *infra*, the DPM, Chapter 16, Table of Penalties provides that the acceptable penalty for a second offense for Insubordination ranges from fifteen (15) to thirty (30) days suspension. Here it is uncontroverted that Employee has been disciplined multiple times prior to

[14] *See* footnote 11 *infra*.

this incident. I find that Employee's conduct constitutes an on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations and it is consistent with the language of the DPM. Therefore, I find that by suspending Employee for thirty days, MPD did not abuse its discretion.

ORDER

Based on the foregoing, it is **ORDERED** that the Agency's action of suspending Employee for twenty five (25) days[15] and for thirty (30) days[16] is hereby **UPHELD**.

FOR THE OFFICE:

_____
ERIC T. ROBINSON, Esq.
Senior Administrative Judge

[15] OEA Matter No. 1601-0236-12.
[16] OEA Matter No. 1601-0069-14.