

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of: EMPLOYEE¹, Employee v. DISTRICT OF COLUMBIA DEPARTMENT OF MOTOR VEHICLES, Agency) OEA Matter No.: 1601-0031-25 Date of Issuance: September 2, 2026 MICHELLE R. HARRIS, ESQ. Senior Administrative Judge Joseph F. Davis, Employee Representative Michele McGee, Esq., Agency Representative)	
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INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 17, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Motor Vehicles’ (“Agency” or “DMV”) decision to terminate her from her position as a Legal Instruments Examiner (“LIE”), effective March 14, 2025. Following a letter from OEA dated March 17, 2025, requesting an Answer in this matter, Agency filed its Answer on April 15, 2025. This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on April 17, 2025. On April 22, 2025, I issued an Order Convening a Prehearing Conference for June 3, 2025. On May 27, 2025, Agency filed a Consent Motion to Extend the Deadline, citing that the parties were still engaged in discovery and additional time was needed. On May 28, 2025, I issued an Order granting the request and extended the time for discovery. Further, that Order rescheduled the Prehearing Conference to August 13, 2025, and Prehearing statements were due by or before August 6, 2025. On August 1, 2025, Agency filed a Motion to Extend, citing that it needed additional time to complete discovery and noted that Employee’s discovery requests were extensive. Agency requested additional time through October 2025 to complete discovery. On August 5, 2025, I issued an Order which converted the August 13, 2025, Prehearing Conference to a Status Conference. That Order also noted that the schedule and deadlines would be determined following the Status Conference.

Both parties appeared for the Status Conference as required. During the August 13, 2025 Status Conference, both parties cited issues with discovery. The undersigned advised that the parties would need to file motions regarding their discovery concerns/issues. Following the conference, I issued an Order citing what was discussed in the conference regarding discovery and scheduled a Discovery/Status Conference for September 17, 2025. On September 11, 2025, Employee filed a

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

Motion to Compel Discovery. Both parties appeared for the Discovery/Status Conference as required. During that conference, the undersigned advised Employee that supplemental information was required. I issued a Post Discovery/Status Conference Order and required Employee file supplemental information by October 3, 2025. Further, Agency was required to respond by October 24, 2025, and I scheduled a Status Conference for October 30, 2025. Employee filed an Amended Motion to Compel on October 3, 2025, and Agency filed a response on October 24, 2025. Both parties appeared for the October 30, 2025 Status Conference. That same day, I issued an Order regarding Employee's Motion to Compel. That Order also required the parties to submit witness lists by November 14, 2025, and scheduled a Status Conference for November 19, 2025, to discuss witness lists and determine dates for an Evidentiary Hearing in this matter. On November 18, 2025, Employee filed a Motion for Partial Summary Disposition citing that a determination made in a decision by the Office of Administrative Hearings (OAH) provided support for a ruling of summary judgement in this matter. Both parties appeared for the November 19, 2025 Status Conference. On November 20, 2025, I issued an Order Convening an Evidentiary Hearing in this matter for January 14, 2026, and January 16, 2026.

The Evidentiary Hearing was held on January 14, 2026, and January 16, 2026, as previously scheduled. However, a witness was unavailable to testify during that time. The undersigned advised the parties to provide an update when the witness would be available, and a final hearing date would be scheduled. On January 28, 2026, I issued an Order Convening the Evidentiary Hearing's final date for February 11, 2026. All parties were present as required, and the Evidentiary Hearing concluded on that date. On March 3, 2026, I issued an Order requiring the parties to submit their closing arguments by or before April 28, 2026. That Order also advised the parties to notify the undersigned of any issues with the transcript. On March 13, 2026, Employee filed an Errata of the Evidentiary Hearing Transcript.² On April 28, 2026, Agency filed a Motion to Extend the time to file Closing Arguments citing to conflicting deadlines/press of work. Agency requested an additional 30 days and noted therein that Employee did not consent to this request. On May 1, 2026, Employee filed an Opposition to Agency's Motion noting therein that there had already been multiple extensions in this matter and that continued delay imposes a tangible burden.

On May 6, 2026, I issued an Order regarding Agency's Motion and Employee's Opposition. The undersigned determined that an extension was warranted, however, not for 30 days. Accordingly, I determined that an extension of 21 days was appropriate in consideration of the parties' positions. The parties' closing arguments were now due by or before May 19, 2026. On June 5, 2026, Agency filed a Notice of Supplemental Authority citing an OEA Board's Opinion and Order issued in the matter of *Employee v. DMV, Opinion and Order*, OEA Matter No. 1601-0046-24 (June 4, 2026). On June 16, 2026, Employee filed her Opposition to Agency's filing of the Notice of Supplemental Authority. In review of the record, the undersigned determined that no further submissions were required. 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 Agency had cause to take adverse action against Employee;
2. Whether Agency followed all applicable laws, rules and regulations; and

² The information cited by Employee were grammatical and spelling errors identified in their review of the transcript.

3. If so, whether termination was the appropriate penalty under the circumstances.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.³

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, 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.

SUMMARY OF TESTIMONY⁴

On January 14, 2026, January 16, 2026, and February 11, 2026, an Evidentiary Hearing was held before this Office.⁵ The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as “Tr.”) which was generated following the conclusion of the proceeding. Both Employee and Agency presented testimonial and documentary evidence during the Evidentiary Hearing to support their positions.

Transcript Volume 1 January 14, 2026

Antoya Watson Pearson (“Pearson”) Tr. Pp. 26 – 77

Pearson is a Processing Center Supervisor at Agency and has been in this role for two (2) years. She explained that the processing center at the DMV where they process tags, registration and other processes that deal with vehicles. Pearson testified that the center is located at 95 M Street on the second floor. She noted that processing center employees do not have interactions with the public on a regular basis. Tr. 28. She described that the processing center currently has 17 employees, two (2) supervisors, and one (1) lead. Tr. 29. She also noted that the floor plan is a partial cubical set up. Pearson testified that she was Employee’s supervisor for six (6) months. Tr. 29. She also affirmed that she worked with K.M. Tr. 30. Pearson affirmed that she remembered an incident that occurred after lunch on October 15, 2024. Pearson stated that she had observed Employee and K.M. earlier that day

³ OEA Rule “Definitions § 699.1.”

⁴ For the purposes of this Initial Decision and its subsequent publication to the OEA website and D.C. Register; the names of all other employees who testified (employees who are not supervisors or agency leadership) and/or were included as a part of the parties’ submissions to this Office have been redacted to only reflect the initials of their first and last names.

⁵ Vol. 1 denotes the first day of the Evidentiary Hearing, Vol. 2 represents the second day, and Vol 3. represents the third day of the Evidentiary hearing in this matter.

talking while sitting at a table. Tr. 30. After lunch, she said that she heard a lot of yelling and screaming and could not tell who it was. Pearson noted that after she got closer, K.M. was the first person she encountered and that she heard Employee screaming. Tr. 32.

Pearson testified that she did not hear K.M., say anything, but Employee was yelling that “she’s going to make me lose my job, that bitch is going to make me lose my job.” Pearson explained that she told Employee to gather her things and that they would go outside. Pearson stated that they began to walk out and Employee was in front of her. Tr. 33. Pearson testified that as they walked past K.M.’s desk, she saw Employee “coming back from” K.M.’s desk, specifically her arm, coming back. Tr. 34. Pearson stated at this same time, she heard K.M. say “she hit me.” Tr. 35. Pearson said she grabbed Employee, pushing her away from K.M.’s desk and they went outside. Pearson affirmed that Employee was fighting against her as she was trying to pull her away from K.M. desk. Tr. 35. Pearson affirmed that Employee was trying to get to K.M. Pearson cited that another person had to help separate Employee from K.M.’s desk. Tr. 36. Pearson said that after Employee was downstairs, she went to make sure K.M. was ok, and she just kept saying “she hit me.” Tr. 36-37. Pearson viewed Agency’s Exhibit 7.⁶ Pearson identified the individuals in the video, including Employee. Tr. 42. Pearson noted that she had concerns about Employee’s behavior in the video (timestamp 3 seconds through 22 seconds) because she was yelling and screaming. Tr. 44.

Pearson reviewed the video and at timestamp 29 seconds, affirmed that she had not heard K.M. make any comments to Employee. Pearson affirmed that at the 32 second timestamp, she heard Employee say, “I’m going to fuck you up.” Pearson stated that she interprets the phrase “going to fuck you up” to mean “use body harm to another person.” Tr. 47. Pearson affirmed that she heard K.M. say, “she hit me” and agreed that this occurred at the 31 seconds timestamp. Tr. 48. Pearson reiterated that it was difficult for her to separate Employee from KM because she was upset and resisting. Tr. 49. She affirmed that K.D. was the other DMV employee who helped keep Employee from K.M. Tr. 50. Pearson again viewed Agency’s Exhibit 7 and at time stamp 14:02:10, identified herself in the view. Pearson agreed that she would describe Employee’s behavior as “completely out of control.” Tr. 52. Pearson testified that as a supervisor, she has never had to break up a physical fight before. Tr. 53. She affirmed that Employee’s behavior was in violation of DMV policy because they have zero tolerance policy of violence toward one another in the office. Tr. 53.

Pearson testified that prior to this incident, she didn’t have any problems with Employee’s conduct. Tr. 56. Pearson explained that Employee had experienced death in her family, but she did not know how long that happened prior to the incident. Pearson affirmed that a family death is not an excuse for the behavior. Tr. 56. Pearson affirmed that when she started working for the DMV, she received a copy of the DMV handbook. Tr. 57. She agreed that the employee handbook is given to every employee and that the zero tolerance for violence policy is clear. Tr. 58. Pearson also affirmed that the processing center had memoranda about the conduct expected at the processing center. Tr. 59. She identified Agency’s Exhibit 4 as a copy of the DMV Handbook receipt acknowledgement for Employee. Tr. 59. She also identified Agency’s Exhibit 5 as the processing center memo. Tr. 60. Pearson testified that during her time with DMV that she was not aware of any other employee engaging in acts of workplace violence. Tr. 61. She stated that another employee told her about one, but that she would pass it on to her supervisor. Pearson cited that she had not seen KM engage in physical acts of violence, nor had anyone told her KM had been physically violent toward them. Tr. 62. Pearson was not aware that KM and Employee had a disagreement on October 15, 2024. Tr. 62.

⁶ Agency Exhibit 7 is video surveillance footage of the incident. Videos and snippets of videos were frequently viewed during this hearing. Notations are made regarding timestamps were available.

Pearson affirmed that after the incident she was asked by Rakonda Cobb (“Cobb”) to write a statement. She explained that Cobb is the Vehicle Services Administrator. Tr. 63. Pearson also affirmed that she provided an oral statement to Service Integrity. Tr. 64. Pearson testified that it was someone else’s decision to terminate Employee.

On cross-examination, Pearson reiterated that she began working with Agency in April of 2024 and that she was the supervisor on duty on October 15, 2024. Tr. 65. Pearson testified that she was delayed in getting up when she heard raised voices because sometimes people on her team are excited when they return from lunch and it takes a few minutes for them to calm down. Tr. 66-67. Pearson stated that when employees come back from lunch they do not curse or swear out loud. Pearson testified that during the time that she was Employee’s supervisor, there were no corrective or adverse actions taken. Tr. 67. Pearson testified that no other employees presented issues to her about KM. Tr.68. Pearson testified that it was not her testimony that she saw Employee raise her hand to swing at KM. Tr. 69. In review of Employee’s Exhibit H (Pearson’s written statement) she read that she wrote that she saw Employee raise her hand to swing. Tr. 70. Pearson explained that when “she was turned around as we saw on camera, when I was turned around [Employee] was coming back.... I never said that I saw [Employee] put hands on her. I said that she was coming back.” Tr. 70. Pearson agreed that there is a difference between coming back and swinging at someone. Tr. 70. Pearson reiterated that she saw Employee recoil. Tr. 71. Pearson affirmed that she did not hear KM saying anything to Employee. Tr. 71. Pearson stated that no one asked her about a fist, and she did not testify about a slap. Tr. 72. Pearson reiterated that she did not see physical contact. Tr. 72. Pearson did not recall if K.M. was wearing glasses prior to this incident occurring. She affirmed that KM regularly wears glasses. Tr. 72.

Pearson testified that she did not see KM fall, recoil back in her chair or act in any way as though she was physically injured. Pearson reiterated that she heard KM say, “she hit me.” Tr. 73. Pearson did not observe any bruises or marks on KM. Pearson affirmed that she was focused on deescalation as opposed to observation during this time. Tr. 74. Pearson defined the DMV zero tolerance policy in her own words to mean that employees are to come to work and have no violence with each other, including use of foul language. Tr. 75. On redirect reexamination, Pearson affirmed that she saw Employee’s body overhanging into KM’s cubicle and that she saw her left arm extended over into the cubicle and that she saw Employee come backward out of the cubicle area. Tr. 76-77.

J.B. (“J.B.”) Tr. Pp. 79 – 106⁷

J.B. testified that he currently works at Emory Hospital in Atlanta, Georgia and that he was previously employed with DMV as a Legal Instrument Examiner (“LIE”). JB cited that he held that position approximately a year and half and affirmed that he worked consistently with Employee and KM. Tr. 81. J.B. testified that work at the processing center had days that were hostile. Tr. 82. He cited that there would be arguments and disagreements between employees and that some of these arguments happened in front of supervisors and managers. Tr. 83. J.B. testified that on October 15, 2024, K.M. was antagonizing Employee. He explained that they were back from break and K.M. was yelling across the room saying, “you’re going to get in trouble, you’re going to get fired, you’re going to lose your job if you fill out some form wrong.” Tr. 86. J.B. explained that he did not know what the form was but stated that Employee was saying “K.M. please leave me alone, leave me alone.” Tr. 86. J.B. said

⁷ Employee’s witness was permitted to testify out of order due to availability to appear.

he was seated about 10 to 15 feet in front of Employee and affirmed that they had assigned seats. Tr. 87. He also noted that the supervisors are stationed about 25-30 feet away. Tr. 87.

J.B. also testified that K.M. continued to antagonize Employee. He said that Employee started saying “let me go, let me just grab my things and go, I have to leave..” He said that Employee grabbed her belongings and left out of the room upset. Tr. 89. J.B. did not see Employee slap K.M. Tr. 89. He did not see her punch or make any physical contact with K.M. Tr. 90. J.B. affirmed that he had a direct sight line to where K.M. and Employee were during the incident. Tr. 90. J.B. said the whole incident last about five to eight minutes. Tr. 90. J.B. affirmed that he recalled the DMV zero tolerance policy in the handbook. Tr. 91. J.B. testified that during his time working in the processing center, he recalled incidents where employees were arguing and using curse words and/or threatened with physical violence. Tr. 92. J.B. did not interact with K.M. on the day of the incident. Tr. 93.

On cross-examination, J.B. affirmed that he remained seated at his desk during the incident on October 15, 2024, between K.M. and Employee. Tr. 96. He did not recall hearing Employee saying “K.M. I am going to fuck you up.” He reiterated that he recalled Employee gathering her belongings and saying she was leaving because she couldn’t take it. Tr. 96. J.B. did not agree that Employee said “that bitch is going to make me lose my job today.” Tr. 97. J.B. did not agree to hearing Employee repeatedly saying she was going to “fuck K.M. up.” Tr. 97. J.B. affirmed that he sat approximately 10 feet away from Employee. Tr. 97. In viewing Agency’s Exhibit 7, J.B. identified someone who had on a coat but noted he could not really see their face. Tr. 102. The Administrative Judge noted for the record that there were issues with the connectivity which did not allow the video to clearly display for J.B. Tr. 104. J.B. affirmed that at the 32 second mark, he was standing up and that K.M.’s desk was blocked and he could not see her. Tr. 105.

Rakonda Cobb (“Cobb”) Tr. Pp. 108-233

Cobb is the DMV Vehicle Services Administrator. Tr. 109. She explained that she is responsible for the operations of the inspection station, processing center and other duties. Tr. 109. She affirmed that she works at the 95 M Southwest location. Cobb testified that she was aware of an incident that occurred on October 15, 2024, in the processing center. Cobb stated that her office is on the third floor of the 95 M Street SW building. She further testified that she first became aware of the October 15th incident when she received a call from the deputy of operations management analyst who told her she needed to come downstairs. Tr. 111. Cobb stated that when she got to the second floor, she saw K.M. and supervisor Pearson. Tr. 112. Cobb testified that K.M. told her that Employee had hit her in the face and Pearson stated that she was trying to remove Employee from the office. Tr. 113. Cobb stated that she asked where Employee was. Cobb noted that K.M. said she was going to call her union. Cobb stated that she learned that K.M.’s glasses had been knocked off through video and statement she read from J.P. Tr. 113. Cobb noted that K.M. was very upset and just kept repeating that she had been hit. Tr. 114. Cobb testified that she went to find Employee, and that she told K.M. that she should start drafting her statement. Tr. 114.

Cobb testified that she went to go find the union representative. Tr. 115. Cobb affirmed that the inspection station is near the employee parking lot. Tr. 115. She noted that she went there because the union shop steward, Shahn Douglas, was there. Tr. 116. She said she was telling Douglas to make sure the union was aware of the incident at the processing center. Tr. 116. Cobb said when she arrived at the inspection station, she heard Employee yelling and saying that “[they] always allow her to get away with this.” Tr. 117. Cobb also noted that other employees, K.D. and T.M. were there. Cobb said

Employee said she was ready to leave and she was just tired of it. Cobb testified that she told Employee that she needed her to come back into the office and write a statement. Tr. 118. Cobb said she spoke with Shahn Douglas about the incident and then went back to the processing center to ensure everyone was okay. She then went to the third floor where Employee was writing her statement. Tr. 118. Cobb said that because there was an incident, it was her experience that it was best to have everyone sit down and write a statement while it was still fresh. Tr. 119. Cobb affirmed that she received a statement from K.M. Tr. 119. She identified K.M.'s statement dated October 15, 2024, in Agency's Exhibit 1. Tr. 120. She also identified Employee's statement. Tr. 121. Cobb stated that employees were not required to write a statement. She also confirmed and identified receiving a statement from T. M. Tr. 121. She identified statements from K.D., J.P., J.B., A.B., T.C., and Antoya Watson Pearson. Tr. 122-123. She also affirmed and identified a statement from R.H. Tr. 123.

Cobb affirmed that she sent Employee and K.M. home on administrative leave on the date of the incident. Tr. 123. Cobb cited that she sent them home on paid administrative leave because there was a physical altercation. Tr. 123. Cobb explained that after she received the statements, she went and spoke with Wanda Patten in the Service Integrity Department. Tr. 123. Cobb explained that Service Integrity is the investigation department in the Department of Motor Vehicles. Tr. 124. Cobb noted that the chief of staff, Tyrone Sweatt, supervises the Service Integrity department. Tr. 124. Cobb identified Agency's Exhibit 8 as the report that was prepared by Service Integrity and affirmed that it's typical for them to investigate acts of suspected misconduct. Tr. 125. Cobb affirmed that she watched the video and reviewed Agency's Exhibit 7. Tr. 126. Cobb said she was concerned by Employee's screaming in the video and that it was disruptive in the processing center. Tr. 127. Cobb cited that Employee calling K.M. a bitch was a violation of the DMV policy. Tr. 128. She identified Ms. Pearson and noted she was concerned that Employee had invaded K.M.'s space. Cobb affirmed that she heard Employee say, "I'm going to fuck you up." Tr. 129. Cobb stated that she viewed that as a violent threat to K.M. Tr. 130. Cobb testified that from the 29 second to the 34 second timestamp, she observed Employee strike K.M. Tr. 130. Cobb explained that after she observed Employee strike K.M., that Employee was still hostile and that it took several individuals to separate her from K.M. Tr. 131.

The Administrative Judge asked Cobb to view the video in Agency's Exhibit 7 and describe the strike that she identified. Tr. 132. Cobb said that at the 30-31 second mark, she saw Employee reach into K.M.'s cubicle and that she heard a pop. Tr. 134. She said that at the moment she heard the pop, she saw K.M. stand up and that's where she sees a strike. Tr. 134. When asked by Agency's representative, Cobb affirmed that she saw a physical strike and heard physical strike. Tr. 134. Cobb identified K.M. in the video. Tr. 135. Agency's representative played another version (Agency Exhibit 7 -Side View) of the surveillance video without sound. Tr. 136-137. The AJ asked Cobb if she had previously seen this video and Cobb affirmed that she had. Tr. 136. When asked by Agency's representative if this second video corroborates her opinion that Employee struck K.M., Cobb affirmed that at the 1 minute and 21 second mark, that it corroborated with her opinion. Cobb also affirmed that she heard Employee saying she was going to "fuck her up." Tr. 139. Cobb testified that Employee was out of control and had to be restrained by four other employees. Tr. 139. Cobb stated that Employee's behavior in the side view video violated DMV policy because she was disruptive and violent. Tr. 139-140. Cobb explained that she was violent because she was "still flaring, [her] body motions are still flaring with the employee, even though [she's] still threatening the other employee by telling her that you want to F her up." Tr. 140.

Cobb affirmed that she felt that Employee was a danger to other employees as she appeared in the side view video. Tr. 140. Cobb affirmed that at the 40 second mark that K.M. was no longer wearing her glasses. Tr. 141. Cobb affirmed that K.M. wears glasses all the time. Tr. 141. Cobb affirmed that

in reviewing the witness statements that K.M.'s glasses were knocked off by Employee. Tr. 142. Cobb did not receive any information that K.M. had physically assaulted Employee. Tr. 142. She noted that K.M. was going "back and forth" verbally with Employee while seated at her desk. Tr. 142-143. Cobb testified that the DMV has a zero-tolerance policy and that it is in the employee handbook. Tr. 143. Cobb reviewed Agency's Exhibit 3 and noted that pages 18 and 19 of that document reflect the zero-tolerance policy of DMV and that it prohibits violence and threats of violence. Tr. 144. Cobb affirmed that "K.M. I'm going to fuck you up to be a veiled threat." Tr. 145. Cobb believed that Employee threatened to harm K.M. Tr. 145. She also affirmed that Employee leaning into K.M.'s cubicle to be threatening. Cobb testified that she did not hear anyone challenging of a fight. Tr. 146-147. Cobb affirmed that she interpreted Employee was telling K.M. that she was going to physically harm her. Tr. 147. Cobb affirmed that Agency's Exhibit 4 was Employee's acknowledgement of receipt of the DMV handbook. Tr. 148. Cobb affirmed that Employee violated the conduct behavior clause in Agency's Exhibit 5. T. 149.

Cobb testified that after she watched the video and received the written statements and integrity services report, she concluded that DMV's policies were violated and that Employee needed to be disciplined for her conduct. Tr. 149-145. Cobb affirmed that when evaluating appropriate discipline that she considered each of the 12 *Douglas* Factors. Tr. 140. She affirmed that she considered Employee's conduct to be serious, very egregious and that it was aggravating. Tr. 151. Cobb testified that she found Employee's job level and employment type to be neutral. Tr. 151. She affirmed that Agency's Exhibit 1 was the proposing official's worksheet. She affirmed that in that document she noted that the job level and employment type to be aggravating. She affirmed that this was based on Employee's actions. Tr. 151. Cobb explained that she categorized past actions as neutral because there were no past disciplinary actions for Employee. Tr. 152. Cobb affirmed that she considered Employee's 32-year work record to be neutral. Tr. 152. Cobb explained that she lost confidence in Employee as it related to the October 15th incident. Tr. 153. She cited that the threat to K.M. was very egregious and that she could not trust that K.M. would be safe in the workplace after this incident. Tr. 153.

Cobb affirmed that she has disciplined other employees for physical altercations in the past three years. She testified that it was one (1) employee and that DMV proposed removal and that employee was terminated. Tr. 154. She affirmed that she was the proposing official in that matter. Cobb stated that since she has been the administrator, no other employees outside of Employee and the one other have had sustained discipline for physical altercations. Cobb affirmed that she noted that Employee's conduct violated DPM 1605.4 and that she also cited to the Table of Illustrative Actions 1607.2 (a)(15). She believed the misconduct was assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property, or while on duty. Tr. 155-156. She affirmed that this was the offense she believed Employee committed. She affirmed that the penalty for this offense was termination. Cobb affirmed that Employee had notice that her behavior was not acceptable, and she found *Douglas* Factor 9 to be aggravating. Tr. 159-160.

Cobb testified that she found *Douglas* Factor 10 -Employee's potential for rehabilitation to be aggravating. She explained that she found it to be aggravating "because she intentionally assaulted the employee. There was no regard for just walking away...or not trying to re-engage at all during the time [she] watched the video." Tr. 157. Cobb affirmed that Employee having to be held back by multiple people was a part of her decision regarding the potential for rehabilitation and felt she could not be rehabilitated. Tr. 157. Cobb also explained that she found *Douglas* Factor 11- mitigating circumstances to be mitigating. Tt. 158. She explained that she found it to be mitigating because the incident was provoked. She explained that in the investigation, she saw that K.M. continued to be

engaged so she considered that to be instigating. K.M. continued to have “dialogue back and forth with [Employee] concerning union business, even after Employee became very agitated and hostile, there continued to be a barrage of conversation back and forth between to two.” Tr. 159. She affirmed that K.M. was verbally provoking Employee. Tr. 159. She did not find any evidence that K.M. was physically aggressive toward Employee. Tr. 159. Cobb said that if an employee is verbally provoked, they do not have the right to hit a coworker. Tr. 160. Cobb affirmed that she was aware that Employee had faced loss in her family. She affirmed that she was aware of these circumstances prior to the October 15th incident. Tr. 160. Cobb said she asked Employee if she needed additional time, but Employee did not ask for assistance or accommodation. Tr. 161. Cobb also noted that she shared with Employee about services through INOVA. Tr. 161. Cobb stated that a familial loss does not justify the behavior she saw on the video. Tr. 161.

Cobb testified that she did not believe that there were any alternative sanctions for Employee in her review of *Douglas* Factor 12. Tr. 162. Cobb explained that she had to “think of the safety of employees, and that was also a very mitigating factor for [her] as well...to arbitrarily take upon yourself to assault another employee, we also have to make sure those employees feel safe.” Tr. 162. The AJ asked Cobb to explain what she meant by her statement regarding “very mitigating.” Cobb explained that in terms of answered whether there were alternative penalties for Employee that “based off the mitigating factors of her in the processing center, one, her assaulting the employee, it is our responsibility for DMV to make sure that our employees feel safe.” Tr. 163. Agency’s representative questioned Cobb and asked her whether she meant aggravating instead of mitigating. The AJ advised that the question was leading and that Cobb could define what the categories mean in the *Douglas* factors. Cobb testified that in consideration of the *Douglas* factors that “neutral means that there’s nothing impacting what you were actually citing as your reasoning for what it was impacting...the aggravating means there was some, but it was not—I’m sorry, mitigating was there was some but it was not extensive, there was half, neutral, half, so it’s in between.” She said that “aggravating” is where “it was too much of one, depending on what you’re responding to.” Tr. 164-165.

Cobb affirmed that she followed the instructions in the rational sheet for evaluating the *Douglas* Factors. Tr. 165. She affirmed those were the definitions she used when doing the assessment for Employee. Tr. 165. The AJ noted for the record that the testimony Cobb previously provided would be noted in terms of her review. Tr. 166. When asked by Agency whether she considered suspension, Cobb noted that she did not because the charge was fighting and the penalty was removal. Tr. 167. Cobb affirmed that she issued the proposed notice to Employee in December of 2024, but that it was rescinded and reissued. Cobb explained that she made an error in placing the offense as conduct prejudicial to D.C. government. Tr. 168. She noted that the packet and rationale worksheet were correct, but the packet had to be corrected. Tr. 168. Cobb explained that Agency’s Exhibit 1, page 2 was the reissued notice of proposed removal. She affirmed that the only thing that had changed was the number for the charge and that the summary of the offense and everything else was the same. Tr. 170. Cobb affirmed that the December 2024 notice was served in person and that the reissued January 2025 notice was sent via FedEx. Tr. 170. She affirmed that she sent Employee the full package. Tr. 171.

On cross-examination Cobb affirmed that she was aware of two separate incidents where Employee’s representative represented employees due to alleged physical violence. Tr. 175. Cobb affirmed that she reviewed all video footage pertaining to Employee’s proposal. T. 175. Cobb testified that she did not ascertain from her review of the videos that K.M. made a phone call to bring her family up to address the issue she just had. Tr. 176. Cobb affirmed that prior to the employees returning from lunch on the day in question, that a number of them were cursing at each other. Tr. 176. Cobb testified

that there had been other incidents where the processing center was disrupted by Employee's behavior. Tr. 177. Cobb explained that there were different incidents that happened between different employees, whether it was verbal altercations, disagreements, she affirmed that there were several disruptions in the processing center when she transitioned as the administrator. Tr. 177. She noted that there were no incidents of physical violence. Tr. 177. Cobb affirmed that she would consider spraying someone in the face with Lysol as physical violence but testified that she was not aware of any incidents in which employees were sprayed in the face with Lysol. Tr. 178. Cobb reviewed the surveillance video and identified K.M.'s desk at timestamp 14:02:40. Tr. 181.

Cobb noted that the video was a bit blurry and could not tell if she could see K.M.'s arm at time stamp 14:02:13. Tr. 183. She could not tell if K.M.'s hand was in front of her face. Tr. 183. She could not tell if Employee's hand was in front of K.M.'s face. Cobb testified that she determined that Employee had struck K.M. as opposed to striking her hand because she did not see K.M. move when she watched the video. Tr. 185. Cobb affirmed that she became aware of Employee allegedly knocking K.M.'s glasses off through statements made by K.M. and J.P. Tr. 186. She reviewed Employee's Exhibit H, which was statement of J.P. She read that J.P. noted that she heard a commotion and that there were people standing near K.M.'s desk. Tr. 187. She read that J.P. stated that she went over to break up what she thought was a fight about to happen. Tr. 187. She asserted that J.P. stated that "when she pulled K.M. back to accounting office, [K.M.] stated that she hit me." Cobb testified that she did not ascertain from this statement that K.M.'s glasses had been knocked off. Tr. 188.

Cobb reviewed Employee's Exhibit H at K.M.'s statement. She read what K.M. described and that K.M. said that "the supervisor came over and that [Employee] was yelling and walked past [her], stopped at [her] desk and hit me in my face." Tr. 190. Cobb explained that she ascertained that the glasses had been knocked off because when she talked to K.M., that is what she stated and that it was not in her written statement. Tr. 191. Cobb affirmed that she believed that Employee was dangerous but she allowed her to return for the Service Integrity interview and to receive the proposal as they were in controlled environments. Tr. 191-192. Cobb affirmed that she was aware that none of the witness statements describe an actual assault taking place. Tr. 193. Cobb testified that she did not have a direct vantage point of the alleged assault beside the video. Tr. 193. Cobb affirmed that the employees who provided statements were in the room where the incident occurred. Tr. 193. Cobb stated that she did not assume who Employee was talking about was K.M. when she overheard her say "she always gets away with this." Tr. 194. Cobb affirmed that K.M. has been disciplined for her behavior. Tr. 198.

Cobb explained that she lost confidence in Employee because she physically assaulted an employee and she ascertained that by watching the video. Tr. 199. Cobb testified that she had to reissue the proposed notice because the charge was for conduct prejudicial to D.C. and she had noted the incorrect code on her first form. Tr. 201. Cobb did not agree that she left out several witness statements in the first notice that were then added to the second proposal. Tr. 202. Cobb did not recall being notified by the Union that the charge she initially listed in the rationale did not exist. Tr. 202. Cobb affirmed that she believed that there was no alternative sanction available. Tr. 203. Cobb stated that she had worked with Employee for about a year and with K.M. for about two years. Tr. 204. Cobb testified that there was no particular reason why Agency appeared to have given more weight to K.M.'s account of what happened as opposed to the witness statements of all the other individuals who were present. Tr. 205. In review of the video, Cobb testified that she could not audibly identify when K.M.'s glasses were knocked off. Tr. 206. She explained that visually, she saw K.M. bend down and when she turned around there were no glasses. Tr. 207. Cobb identified in the video at timestamp 14:02:30, that Employee used her left hand to allegedly strike K.M. Tr. 211. Cobb reviewed the video that showed the rear view of K.M. Cobb was asked to identify the audio at time 14:18:04. She affirmed that she

heard the voice of K.M, and that K.M. could be heard saying, “I need you all to meet me down here now. Come now.” Tr. 222.

On redirect examination, Cobb affirmed that no one brought it to her attention that they had been sprayed in the face with Lysol. Tr. 224. She affirmed that she would have acted if that had happened. Tr. 224. Cobb affirmed that she considered every statement in making her decision to discipline Employee. Tr. 225. She affirmed that she considered those statements in relation to her observations in the video. Tr. 226. Cobb affirmed that K.M. told her that Employee had knocked her glasses off. Cobb reviewed the rear view of Agency’s Exhibit 7. She affirmed that at 29 seconds that Pearson walked by and that Employee started to enter the workspace. She agreed that she saw Employee hit K.M. at the 30 second timestamp. Cobb testified that Employee never denied entering K.M.’s workspace with her left hand. Tr. 229. Cobb testified that he interpreted K.M. bending down that she was picking up her glasses. Tr. 230. She affirmed that the 30 second mark was where she interpreted contact being made. Tr. 230. She identified employees J.P., T.M, K.D. and noted they are all looking away from the action. Tr. 231. She also identified employee J.B. at the timestamp of 30 seconds and noted he was seated at the time of impact. Tr. 231-232. When asked by the AJ how often she had been in the processing center contemporaneous with the time of the incident, Cobb explained that she had been in the center earlier that morning. She affirmed that the seating arrangement was the same at the time of the incident. Tr. 232-233.

*K.M. Tr. Pp. 236-240 (Did not appear)

During the Evidentiary Hearing, the AJ discussed with the parties the fact that the testimony revealed that K.M. would not be appearing for the hearing. Agency’s representative noted that K.M. was on medical leave. The AJ noted that while it was previously determined that K.M. was on an accommodation and would testify virtually, the AJ was not notified that she was on medical leave. Agency’s representative noted that K.M. was on leave at the time of the Prehearing Conference. Tr. 234-235. Agency’s representative further noted that while she hoped K.M. would be back, she had learned the day before that it was not possible and that she has no confirmed return date. Tr. 236. Employee’s representative noted he was aware of K.M.’s leave and noted that another witness, Wanda Patten, was on medical leave and was also unavailable to testify. Agency’s representative noted that Patten had emailed her earlier that morning and noted she was out on leave. Tr. 236-237. As it related to K.M., Agency cited that they had informed Employee’s representative that they would no longer be calling her. Employee’s representative noted that they were aware of K.M.’s medical condition and did not feel that it was practical to postpone the hearing given the nature of her circumstances. Tr. 239. The undersigned noted for the record that K.M. would no longer be testifying. Tr. 240.

Gabriel Robinson (“Robinson”) Tr. 242- 308

Robinson testified that he is the Director of DMV and has been in that role since 2019. Tr. 243. He affirmed that he was made aware of the October 15, 2024, incident involving Employee and K.M. Tr. 243. He explained that he was informed on the day of the incident that there had been an altercation between K.M. and Employee. Tr. 244. He affirmed that he didn’t provide any specific instruction because senior leadership, the legal services administrator, was already involved by the time he was made aware. Tr. 244. He affirmed that there was an investigation by Service Integrity. Tr. 245. He also affirmed that Cobb received written statements about the incident. Tr. 245. He affirmed that he received a copy of the Notice of Proposed Termination drafted by Cobb. Tr. 245. He testified that he received it after it was issued to Employee. He further testified that as the Deciding Official, he obtained the Notice of Adverse Action as a package with all information for him to make his decision. Tr. 245.

Robinson noted that he was aware of what was going on but was not involved in the “nitty-gritty” of the investigation. Tr. 246. Robinson affirmed that Agency’s Exhibit 2 was the final decision to terminate Employee. Tr. 246. He affirmed that he reviewed the attachments, including the proposed separation document drafted by Cobb. Tr. 247. He affirmed he reviewed the witness statements, the Service Integrity Report and the video. He also reviewed the Employee Handbook and the Processing Center policies memo, and the Hearing Officer’s report. He affirmed that he considered the recommendation of the hearing officer in forming his decision and that it was his decision to terminate Employee. Tr. 248.

Robinson said that in review of the “complete body of evidence” and the video made available to him, he determined that this incident was so severe that it warranted termination. Tr. 248-249. Robinson affirmed that he heard the comments Employee made toward K.M. and that those caused him concern. Tr. 249. He affirmed that in his view of the video that he saw Employee strike K.M. He also noted he saw a supervisor was trying to deescalate the situation and, on the way out, Employee reached over and struck K.M. Tr. 250. Robinson noted that in his review of the video, he had concerns because after the strike, Employee’s posture was like she was “prepared to defend herself after the strike – understanding that K.M. would react, from [his] understanding of what [he] was seeing.” Tr. 251. He also noted that he saw several other employees holding her back. Tr. 251. Robinson noted that Employee made several statements that she was “going to fuck you up” and he viewed that as a threat. Tr. 252-253.

Robinson affirmed that he reviewed Cobb’s rationale worksheet. Tr. 254. He noted that for the first *Douglas* Factor that he found the dispute to be very serious in that it went from a verbal dispute to a physical altercation. Tr. 254. Robinson testified that if Employee had attempted to strike K.M. but did not make contact that his position would be the same. Tr. 254. He found this to be aggravating. Tr. 255. Robinson also testified that for *Douglas* Factor 5, he lost confidence in Employee. He explained that it is a communal workspace and everyone works in close proximity, and that this changed the work environment and made his team unproductive. Tr. 256. Robinson also noted that the video showed K.M. seated and not in a position to lunge. Tr. 257. Robinson affirmed that he found Employee’s conduct to be a danger to DMV staff and the public. Tr. 258. He also noted he had concerns about future behavior. Tr. 258. Robinson testified that it is never appropriate to hit coworker. He empathized with what Employee had been going through, but there is no instance where it is okay to strike a colleague. Tr. 259-260.

Robinson affirmed that since he has been the Director and in the past three years, that there was one other instance of employees engaging in a physical altercation and noted that they were terminated. Tr. 260. Robinson testified that he considered Employee’s work history in making his decision. Tr. 261. Robinson also indicated that he considered the potential for rehabilitation but found Employee’s action severe and because she struck another employee, he could not consider rehabilitation. Tr. 262-263. Robinson testified that he stands by his decision to terminate Employee. Tr. 265. Robinson also affirmed that K.M. was disciplined because of the October 15, 2024, incident. Tr. 265. He testified that he was not the deciding official for that action but noted that K.M. received a “substantial suspension.” Tr. 266. Robinson cited that he terminated Employee because of the physical assault. Tr. 266.

On cross-examination, Robinson indicated that he saw both versions of the proposed notices. He saw the first one after it was issued to Employee, and the second before it was mailed to Employee. Tr. 268. Robinson affirmed that he considered the witness statements in making his decision and that he read K.M.’s Employee’s and Pearson’s statements. Robinson affirmed that the witness statements

did not indicate that they saw physical contact. He did not recall if anyone said they saw physical contact. Robinson also noted that he relied on the investigative report. Robinson explained that the DMV zero tolerance policy “talks about a myriad of things that he cannot recite on the stand.” He noted that each employee receives a copy and that it talks about zero tolerance, and about professionalism and conduct. Tr. 270-271. Robinson affirmed that harassment is addressed in the handbook. Tr. 272. He affirmed that bullying and intimidation are mentioned in the handbook. Tr. 2723. Robinson testified that in his knowledge, within the past three years, K.M. had been involved in two disciplinary actions inclusive of this one but noted there are other deciding officials. Tr. 276. Robinson noted that this incident was about striking. He recalled that Employee’s statement indicate that K.M. pointed at her and that she pointed back. Tr. 277. Robinson stated that he believed that Employee’s statement was not consistent with some areas of the video. Tr. 277.

Robinson testified that he believed that Employee’s statement about pointing was not consistent with the video. Tr. 278. Robinson was asked to review Employee’s Exhibit 3, page 40, the investigative report. 280-281. He read in the report that K.M. directed additional comments to Employee concerning the union’s nomination process. Tr. 282. Robinson noted that he believed both K.M. and Employee deserved disciplinary action for the verbal dispute. He noted that he believed that K.M. was seated in her desk in what he deemed to be a non-defensive position because she wasn’t in a position to physically do anything to Employee. Tr. 282-283. Robinson reviewed the video and identified K.M. Tr. 284. He affirmed that he viewed K.M. at her desk and that she began to pull up her hair. Tr. 285. Robinson noted that in and around the timestamp of 14:02:05 that he is “seeing all the action is consistent with a strike.” Tr. 286-287. He noted that he sees “K.M.’s hand raised as Employee’s hand is already over her cubicle.” Tr. 287. When asked how he determined that Employee struck K.M., Robinson testified that “Employee put herself inside of K.M.’s cubicle, K.M. did not come outside of her cubicle...Employee is hanging over Employee’s cubicle.” Tr. 287. Robinson testified that Employee was separated because she struck another employee. Tr. 287-288. Robinson affirmed his belief that Employee struck K.M. based on what he watched. Tr. 288. Robinson affirmed that he was aware that Employee worked at the DMV for 32 years and learned during the process that she had no disciplinary record. Tr. 289.

Robinson reiterated that he believed termination was warranted because of the strike. Tr. 290. Robinson reviewed Pearson’s statement and read that Pearson stated that Employee “swung on K.M., but she did not know if Employee actually hit K.M. or not because her back was turned.” Tr. 292. Robinson testified that he relied on Pearson’s statement, but his decision was based on a complete review of all the evidence. Tr. 293. Robinson affirmed that Pearson said in her statement that Employee swung. He also noted that K.M. said she was hit. Tr. 294-295. He also said that another witness talked about swinging and Employee talked about pointing. Tr. 295. Robinson affirmed that only two (2) witness statements allege a physical strike/assault, K.M. and Pearson. Tr. 296. When asked what charge under Conduct Prejudicial (1605.4) that Employee violated, Robinson testified that he believed it would be number 3, “conduct of an employee should reasonably know is a violation of the law or regulation.” Tr. 300-301. Robinson testified that in his understanding, that it was included in the Douglas factors worksheet section of the Proposed Notice. Tr. 302.

On redirect examination, Robinson again reviewed *Douglas* Factor 7 and affirmed that it noted that the cause was 1605.4, Conduct Prejudicial, and that the offense number was 1607.2 (a)(15) and that it is described as assaulting fighting etc. Robinson said he relied upon this in forming his decision to terminate Employee. Tr. 306. Robinson affirmed that “in the entirety of the video, he believed that Employee hit K.M., because they were in a heated argument and that he noticed Employee’s quick

action to defend herself. Tr. 207. He noted that the totality of all the evidence he reviewed led him to believe that there was a strike. Tr. 308.
Transcript Volume 2: January 15, 2026

Employee's Case-In-Chief

K.D. Vol. 2. Tr. Pp. 6 – 41

K.D. currently works for DMV as a legal instrument examiner and she is located at the Benning Road Service Center. Tr. 8. She noted that she was previously deployed to the DMV processing center and that she has been with DMV approximately 12 years. Tr. 8-9. She testified that she has known Employee for about three (3) years while she worked at the processing center. She also noted that she has known K.M. for longer, about seven (7) years. K.D. affirmed that she was working at the processing center on October 15, 2024. She testified that it was a hostile work environment that day. She explained that employees were “going back and forth” and that included K.M. and Employee amongst others. Tr. 13. She also noted that this occurred throughout the day. She could not recall verbatim who else may have been present in the processing center that day. Tr. 14. K.D. testified that when they were in the break room, Employee and K.M. were already in a verbal argument. She explained that she, T.M. and Employee were sitting and K.M. entered and “very aggressively” talking about doing illegal transactions for the upcoming [union] election. Tr. 14. She said K.M. tried to “snatch” a piece of paper from Employee’s hands. She stated that the verbal argument continued and that she and T.M. went to find their shop steward to talk to him about how to handle the situation. Tr. 15.

K.D. testified that by the time she and T.M. returned from speaking to the shop steward, K.M. and Employee were back at their desks and were still going back and forth. Tr. 15. She said it was a lot of yelling and antagonizing. Tr. 16. She said the situation escalated quickly. Tr. 16. She explained that Employee was angry because someone was saying that she was going to get fired. Tr. 16-17. She said Employee’s voice was raised. Tr. 17. K.D. said the supervisor was acting confused and “scrambling.” Tr. 18. She said that Pearson approached Employee’s desk, and that Employee said she was going to leave for the day and was gathering her belongings. Tr. 19. K.D. said she did not believe there was any physical altercation that happened. She testified that she did not have a clear view of the interaction and could not observe either Employee’s or K.M.’s hands. Tr. 19. She affirmed that she did not see any physical altercation at that time. Tr. 20. K.D. affirmed that she is familiar with the Service Integrity office at DMV. Tr. 22. She said they investigate DMV-related issues. Tr. 22. K.D. testified that she was asked to write a statement and that she did provide a statement. Tr. 23. She identified Employee Exhibit H as her statement and read her statement aloud. K.D. said she did not have any knowledge of Employee having been disciplined. Tr. 28. She affirmed that she witnessed physical altercations between employees while she was in the processing center. Tr. 28. She also testified that she witnessed K.M. get in multiple verbal arguments with at least five or six other employees, but none of those were physical in nature. Tr. 29. K.D. explained that once she got Employee outside, that she was calming her down. She said Cobb came outside to speak with Employee and told her and T.M. to go back into the office. Tr. 30. K.D. said that Employee was upset about the situation and could not believe that K.M. had antagonized her to that point. K.D. said that Employee did not make any physical threat toward K.M. Tr. 30.

On cross-examination, K.D. viewed a video (rear view) and identified herself and where her desk was. She identified where Employee’s desk was and where T.M. was standing and noted she was very close and that K.M. was across from her. Tr. 35. She affirmed that when she was standing at her desk, she heard Employee yelling and that she was helping her gather her belongings. Tr. 36. She

affirmed that at the 47-second mark that she heard Employee say “K.M. I’m going to fuck you up” and that she repeatedly said, “I’m going to fuck that bitch up.” Tr. 38. K.D. said that to her, that meant “she was going to put hands on her.” Tr. 39. She said they were not allowed to make threats like that at work. Tr. 39. She affirmed that in view of this video, that she saw Employee lean into K.M.’s desk and say “K.M. I am going to fuck you up.” Tr. 39. She agreed that her view was partially obstructed from her desk and that she was never able to actually see. Tr. 39. K.D. affirmed that DMV informed her that they are not allowed to physically assault coworkers while at work. Tr. 40. On redirect, K.D. testified that she has heard another employee say they “would fuck them up” in the time that she has been working at the processing center. Tr.40.

T.M. Vol. 2. Tr. Pp. 41-84

T.M. works at DMV as a Legal Instruments Examiner and has had that position for 10 years. Tr. 43. She is currently assigned at the Benning Road location. Prior to this, she was at the processing center and affirmed that she worked with K.M. and Employee. Tr. 43-44. She said they all had the same job title and work duties. T.M. testified that the work environment on October 15, 2024, was hostile. She noted that on that day, she was in the break room during her lunch period, and they had been discussing the union ballot. Tr. 45. She explained that she was in the breakroom with K.D., A.B. and Employee and perhaps one other employee that she could not recall. Tr. 46. T.M. explained that when they were initially in the breakroom, K.M. was not there, but came after she heard they were discussing the union ballot. Tr. 46. She said that K.M. came in and said that they “were so damn dumb, you don’t know how to fill out the form properly or complete the application properly.” Tr. 46. She said that K.M. said they were dumb and that they were going to jail. Tr. 47. K.D. testified that Employee said “well K.M., did you want to show us how to fill out the form...you were a previous union member, you want to show us how to fill out the form.” Tr. 48. She said that K.M. came and tried to snatch the papers out of Employee’s hand and that Employee grabbed them back. She said that Employee said, just show them on a blank sheet, not the actual form, and that K.M. responded and said “I’m not showing you all shit...just know you all going to jail.” Tr. 49. T.M. said she talked to K.D. and said they should go and ask [shop steward] if they are completing the form correctly. Tr. 40. She said they went and spoke to Shahn [Douglas] at the inspection station and then returned to the processing center. Tr. 49.

T.M. said that when she returned, she started to sit down and heard K.M. say something but didn’t pay it any mind. She then heard Employee say “K.M. leave me alone...I don’t even care about the union stuff.” She said K.M. responded and said, “because you bitches are dumb and you all going to jail...you just watch, you all going to jail.” Tr. 50. T.M. said she could hear that Employee’s voice was upset, so she went back to check on her, knowing she had just come back to work after a death in her family Tr. 50. T.M. said she told Employee to just ignore her and that Employee said she was going home. Tr. 51. T.M. recalled Pearson coming toward Employee’s desk. She recalled that Employee said to Pearson, “I’m sick of her harassing me.” Tr. 52. T.M. said that Employee was starting to cry and that she told her that she should go home and that Pearson said that was for the best. Tr. 52. T.M. said she had a clear vantage point of both K.M. and Employee when Pearson and Employee walked past K.M.’s desk. Tr. 53. She did not recall Employee physically assaulting, slapping, punching, or otherwise making contact with K.M.’s face. Tr. 53.

T.M. affirmed that Cobb asked her to write a statement and that she asked everyone to write a statement even if they had just heard what happened. Tr. 54. T.M. identified her statement in Employee’s Exhibit H and read her statement aloud. Tr. 54-56. T.M. testified that she was not personally involved in a physical altercation with any other employees. Tr. 60. T.M. also recalled that

she has written a statement involving someone else in the last three years. Tr. 61. T.M. said she did not feel unsafe because of Employee's behavior. She explained that Employee has never had any other incidents that she knew of. Tr. 62.

On cross-examination, T.M. testified that she has not seen a fight at work. She affirmed that another employee was terminated but it was not for a physical altercation. She testified that she did not observe a physical altercation between Employee and K.M. Tr. 67. She affirmed that they were just pointing at each other, and that she believed that K.M. pointed first. Tr. 67. She remembered that as Employee was leaving, she saw K.M. wrapping up her hair. Tr. 67. She said she was standing near Employee's desk at the time of the incident. Tr. 68. She said that both Employee and K.M. were using profanity. She recalled Employee saying, "I'm sick of this bitch". Tr. 69. T.M. said that both Employee and K.M. were restrained by DMV staff and noted that Pearson grabbed Employee. Tr. 69. She did not agree that Employee was fighting Pearson and trying to get to K.M. Tr. 70. K.M. viewed Agency's Exhibit 7 and identified Pearson. She also affirmed that she heard Employee say "K.M. I'm going to fuck you up." Tr. 74. She identified herself as bending down at the 28 second mark in the video. Tr. 74. She noted that she could not see K.M.'s arms but that she sees Employee's hand in K.M. desk. In review of another version, she affirmed that she heard Employee say "I'm going to fuck that bitch up" at timestamp 14:02:26. Tr. 79. She affirmed that she sees Employee being pushed back. Tr. 80. T.M. testified that it did not look like Employee was pushing Pearson to get to K.M. Tr. 82. She affirmed that the handbook does not permit an employee to say, "I'm going to fuck you up." Tr. 82. On redirect, T.M. testified that management was present when she heard other employees say things like "I'm going to fuck you up." Tr. 83.

Employee Vol. 2. Tr. Pp. 85- 208

Employee testified that until her termination, she was employed with the DMV for 32 years as legal instrument examiner ("LIE"). She explained that she worked in the processing center and her duties included vehicle registration, tag renewal, reinstatements, driver license and other tasks. Tr. 87. She stated that at the time of the October 15, 2024, incident, she had been at the processing center since 2022. Employee affirmed that K.M. was also a LIE at Agency. Employee testified that she and K.M. interacted frequently in the workplace. She noted that they had gone to lunch together and that Employee had given K.M. rides home or to the bus stop. Tr. 88. Employee affirmed that she received regular performance evaluations and that she got "role model" efficient employee and was always graded at a four or five for all her evaluations. Tr. 89. She identified Employee's Exhibit F as her FY'2023 performance evaluation. She noted that her evaluation score for that was "highly effective performer" and that she received a 3.75. Tr. 90. Employee testified that in the course of her employment with DMV, she never received disciplinary action. Tr. 91. She also noted that she was never involved in any physical altercations with employees. Tr. 91. Employee affirmed that she had witnessed multiple physical altercations between other employees at the processing center. Tr. 92. Employee testified that she had never been placed on a Performance Improvement Plan ("PIP") and had never received counseling regarding her behavior at the workplace. Tr. 93.

Employee affirmed that she signed a sheet for the employee handbook and that it was sent to her email. Tr. 93. She affirmed that she did receive processing center memos but could not recall when. Tr. 93. Employee explained that memos came when there was an "uproar" and that the processing center was very "toxic." Tr. 93-94. Employee stated that the processing center was a toxic environment and there were bullies who called people "dirty bitches, fat, etc." She also said some people cursed at the supervisors. Tr. 94. Employee noted that during her time at the processing center, her supervisors were Jasmine Hickson and Antonya Pearson. She noted that Pearson was new and that she didn't know

her well. Tr. 95. Employee testified that Pearson was the supervisor present on October 15, 2024. Employee also noted that her manager at the processing center was Fabien Toussaint, but he was not her manager on October 15, 2024. Tr. 95. Employee affirmed that during her time at the processing center, she observed physical interactions between other employees (not including herself). Tr. 97.

Employee explained that prior to the October 15, 2024, incident, she had been out of the office for approximately three (3) weeks due to the death of two family members in a short time period. She noted that she had just returned to work in October. Employee affirmed that she told her supervisors and management that she would not be present at work. Tr. 99. Employee noted that she told Rakonda Cobb and Jasmine Hickson about her absence. Tr. 100. Employee explained that Cobb is the administrator. Cobb did not offer any outreach or assistance regarding the reason why Employee was out of work. Tr. 100. Employee testified that on October 15, 2024, she was having a good day. She noted that she was a little depressed but had a good morning. Tr. 101. Employee identified Employee Exhibit J (rear of K.M. desk view) as the processing area, near the break room. Tr. 104. Employee explained that at 1:04pm she would be at lunch. She recalled that on October 15th, she and other employees were having lunch in the breakroom. She noted that T.M., K.D., A.B. were in the breakroom. Employee explained that they were discussing the new election for the union. Tr. 106. She said that K.M. was not present but entered the break room and went to the water fountain. Tr. 106. She said that K.M. was angry when she came in and made comments to her.

Employee testified that K.M. said “you don’t know what you’re doing, you [were] on a call...you all some dumb ass, you all dumb as shit...you all think you all know...you all just trying to pick a certain person.” Tr. 107. Employee cited that K.M. just kept saying those things repeatedly, calling them “dumb-ass motherfuckers, stupid, dirty asses, ignorant.” Tr. 107. Employee said she responded and said “K.M. I’m not for this.” Employee explained that she was holding papers in her hand, and K.M. tried to snatch them away and she told her, “don’t snatch nothing out my hand.” Tr. 108. She further explained that K.M. continued to call them dumb ass motherfuckers and said they were going to jail for helping Shahn and “all you motherfuckers are going to jail.” Tr. 108.

Employee also testified that she got up to leave the breakroom. She recalled that the others were still sitting down because they were saying they were going to go ask Shahn how to fill out the documents. Employee stated that she put on her jacket to go, K.M. was sitting at her desk. Employee said that when she passed K.M.’s desk, K.M. said, “[Employee] I ain’t playing. You’re going to fucking jail. You keep trying to help out Shahn, you’re going to fucking jail...” Tr. 109. Employee testified that she told K.M. to leave her alone “I don’t feel like this today. Leave me the fuck alone...” Tr. 109. Employee viewed Employee’s Exhibit K (video rearview processing center). At timestamp 14:01:50, Employee identified K.D. and T.M. standing at her cubicle. Tr. 111. She said they were at her cubicle to try and calm her down and were telling her to ignore K.M. Tr. 111. Employee said that while she was at her desk, K.M. kept telling her that she was going to jail. Tr. 113. At timestamp 14:01:53 of Ex. K, Employee identified Antoya Pearson standing at her desk. Employee also identified her own voice in the video and affirmed that it was raised. She explained that she was agitated by K.M. telling her that she was going to jail and that she was going to make Employee lose her job and accusing her of doing illegal “stuff.” Tr. 114. She said that K.M. kept antagonizing her, smirking, saying she was going to lose her job and that she was going to jail. Tr. 115.

Employee stated that when Pearson came to her desk, she asked her what was going on. Tr. 115. Employee said she told Pearson, “you hear her over there, this has been going on for a while, she keeps telling me I’m going to jail.” Tr. 115. Employee said she told Pearson that she was leaving and that she said, “okay, just get your stuff and get ready to go.” Tr. 115. Employee testified that she started

to cry and said, "I'm sick of her...she's over there laughing, smirking...and you all allow her to do this to all of us every day." Tr. 116. Employee viewed the video again and identified at timestamp 14:02:05 that she was walking past K.M.'s desk. She identified at timestamp 14:02:27 that Pearson was standing directly in front of K.M.'s desk and her back was facing Employee. Tr. 117. She identified K.M. at timestamp 14:02:28 and said she was sitting at her desk, calling her a bitch. Tr. 117. Employee testified that she was walking past and when K.M. called her a bitch, she pointed at K.M. and said, "I will fuck you up." Tr. 118.

Employee testified that she never struck K.M. Tr. 119. She said in view of the video that her hand was open and she was pointing at K.M. Employee also identified at 14:02:02 that the object in front of K.M.'s computer screen was K.M.'s hand. She said that K.M. hit her hand. Tr. 120. She said she could not see K.M.'s face clearly at this point in the video. Tr. 121. She noted that she could not see her hand clearly in the video either. Tr. 121. Employee identified that at timestamp 14:02:52, that K.M. had moved and was jumping up. Employee also explained that Pearson was pulling her, telling her to come out because K.M. had jumped up. Tr. 122. Employee testified that she believed that K.M. wanted to fight. Tr. 123. Employee identified at timestamp 14:02:32 that K.M. was coming toward her. Tr. 123. Employee opined that K.M. was coming toward her to fight. Tr. 124. Employee did not recall if she felt that she was in danger. Tr. 125. Employee could not recall if K.M. was wearing glasses. Tr. 125. Employee testified that K.M. does have glasses but most of the time they are off. Tr. 125. Employee further testified that she is right-handed.

Employee explained that after the altercation she went downstairs to her car which was parked in the inspection lot. Tr. 127. She recalled that T.M., K.D. both were walking down the steps with her. Employee testified that she went straight to her car because she was hysterical and needed to calm down. Tr. 128. Employee said that Cobb came down and told her, "I need you to write me a statement because I'm sick of her." Tr. 129. She said that Cobb told her that "you cannot leave without writing me a statement." Tr. 129. She also said Cobb asked her how she would get home. Employee said she had called her sister, but she didn't answer. Tr. 129. Employee said she told Cobb that she was going to wait until she calmed down to write the statement and then she would be able to drive. Tr. 129. Employee said she went up the elevator with Cobb, and she gave her a booklet and said to write everything that happened. Tr. 130. She said she was in a break room next to the director's office. Tr. 130. Employee said that while she was in that room, Bridget Snipes came in once and asked her if she was ok. Tr. 131.

Employee affirmed that there is armed security at the 95 M Street location. She testified that no security personnel were involved in the incident with her and K.M. Tr. 131. No security personnel were monitoring her as she wrote her statement, and she did not have any encounter with security during or after the incident. Tr. 132. Employee identified her statement in Employee's Exhibit H. She affirmed that it was the statement that she wrote after the incident. Tr. 132. Employee read her statement aloud. Tr. 133-134. Employee testified that she stands by the statement she wrote regarding the incident. Tr. 134. Employee further testified that she did not return the day after the incident because Cobb said she was on administrative leave. Employee said that she received a call from Cobb in December asking her to come into the office. She asked Cobb if she needed a union representative, and she said Cobb said it was up to her. Tr. 136. Employee testified that she called Joey Davis and he accompanied her to meet with Ms. Cobb at the office. Tr. 136.

Employee said that when she arrived at the office with Mr. Davis, Cobb handed her a paper and said she needed to sign it. Cobb also handed Employee a box with her item. Employee said she asked her union representative if she had been fired. She told him she couldn't accept the box because

she didn't do anything wrong. Tr. 137. Employee said she received text saying that she had just been fired. Tr. 138. Employee said she received something in the mail regarding her proposed separation. Tr. 138. Employee noted that she and her union representative were not escorted by management or security to the meeting location. Tr. 140. Employee affirmed that she worked with her union representative on a response to the December 2024 proposed separation. Tr. 140. She identified Employee's Exhibit A, as the proposed notice dated December 5, 2024. Tr. 141. She noted that her union rep identified issues in that the "number that they [were] trying to remove [her] for was not an existing number." Tr. 141. Employee said that after she turned in her response, Agency re-issued the notice. Employee identified Employee's Exhibit B as the January 7, 2025, proposed notice. Tr. 142. Employee said that to the best of her recollection she received the final notice of her termination on March 15, 2025. Tr. 144. Employee said that she filed an appeal. Tr. 144. Employee said it was her opinion that she was wrongfully terminated and that she admitted to the cursing, but she never struck anyone. Tr. 146. Employee affirmed that she was interviewed by Service Integrity in person. Tr. 148. She was not offered the opportunity to submit evidence or identify witnesses on her behalf. Tr. 148.

Employee said she received a copy of the investigative report "real late." Tr. 148. Employee opined that she was treated differently than other employees who faced discipline in the last three years. Tr. 148. Employee testified that she does not hold any personal animosity toward K.M. Tr. 149. She stated that she never intended to attack any employee during or after this incident. Tr. 149. Employee explained that the separation has personally affected her a lot. She has not been able to get jobs. She put in 32 years and lost her retirement and has nothing. She maintained that she never assaulted anyone. She affirmed that she remains willing to work and wants her job back at the DMV. Tr. 151.

On cross-examination, Employee affirmed that she didn't do anything wrong. Employee noted that her use of profanity was wrong. Tr. 155. She agreed that DMV policy prohibits yelling while on duty or using curse words. Tr. 155. Employee affirmed that she said "that bitch is going to make me lose my job today." Employee affirmed that she did not calm down when Pearson came to her desk and that she kept yelling. Tr. 156-157. The video from Agency's Exhibit 7 was played and Employee affirmed that she said "I will fuck you up" to K.M. Tr. 160. Employee said it "was probably a threat to her." She did not agree that it was a threat of physical harm. Tr. 161. Employee reiterated that she was not trying to harm K.M. Tr. 161. Employee stated that she pointed at K.M. but was not near her face. Tr. 161. Employee testified that she did not lean over into K.M.'s cube but pointed at her. She noted that she did not remember leaning into the cubicle. Tr. 162. Employee viewed the video (rear view), and she did not agree that at the 54 second mark that she leaned into the cubicle. She reiterated that she pointed into K.M.'s cubicle. Tr. 154.

Employee agreed that she pointed first at K.M. She did not know where K.M.'s arms were. Tr. 166. Employee said that K.M. raised her hand and hit her hand. Tr. 166. Employee was asked about her October 15th statement where she wrote that "K.M., she called me a bitch and pointed at me, so I pointed back." Tr. 166. Employee said that she agreed that she and K.M. pointed at each other. She reiterated that K.M. slapped her hand. Employee agreed that the video showed she pointed first. Tr. 167. Employee testified that what she wrote in her statement is how she recalled the incident that day. Tr. 169. She said that she wrote that "she pointed and I pointed back." Employee affirmed that K.M. said that Employee had knocked her glasses off her face. Tr. 172. Employee was asked to review Agency Exhibit C. She affirmed that this was her response to notice of adverse action. Tr. 174. Employee agreed that cursing violated DMV policy but maintained that she did not threaten K.M. Tr. 174. She agreed that threatening an employee is a violation of policy. Tr. 173. Employee asserted that she pointed at K.M. when K.M. called her a bitch. Tr. 175. Employee agreed that if an employee calls

her a bitch, you don't have the right to assault them. Tr. 177. Employee averred that she did not point at K.M.'s face. Tr. 178. She agreed that DMV policy prohibits physically going into someone else's space or reaching into someone's cubicle. Tr. 178.

Employee did not agree that she was restrained by multiple DMV staff members. Tr. 179. She reviewed the video again and identified that in the 56-59 second time frame, that K.M. had her hands up. Tr. 181. She reiterated that her arm was up. She also said K.M. was coming out of her cube. Tr. 182-183. Employee did not agree that K.M. was walking back into her cube at the 59 second mark. Tr. 183-184. Employee did not agree that she was pushing Pearson. Tr. 186. Reviewing the video starting at timestamp 1:02, Employee identified where K.M.'s cube was and at the 1:03 mark affirmed that K.M. was not by her at that time. Tr. 188. Employee asserted that she was not trying to get to K.M. and that she was trying to get out of the processing center. Tr. 188. Employee affirmed that she was yelling "I'm going to fuck that bitch up." Tr. 189. She did not agree that that was a threat. Tr. 189. Employee agreed that the phrase "I'm going fuck that bitch up" is not a kind phrase. Tr. 190. She did not agree that saying it repeatedly was a threat. Tr. 191. Employee affirmed that cursing violates DMV policy. Tr. 191. Employee said she does not dislike K.M., but that day she was upset because K.M. kept antagonizing her. Tr. 191.

Employee said she was trying to walk out the processing center until K.M. called her a bitch. Tr. 192. She affirmed that no one forced her to point at K.M. Tr. 193. She also agreed that she made the choice to say "K.M. I'm going to fuck you up." Tr. 194. Employee again affirmed that she was yelling and using profanity. Tr. 195. Employee affirmed that when she gave her written statement, the incident was fresh in her mind. Tr. 197. When asked why her written statement did not inform the DMV that K.M. touched her, Employee testified that she did not realize K.M. had touched her until the DMV sent her the video. Tr. 197. Employee affirmed that her written statement did not indicate that K.M. had touched her in any way. Tr. 198. Employee affirmed that when she wrote her statement, she felt it was important to explain what happened from her perspective. Tr. 198-199. Employee affirmed that she has watched the videos of the incident "100 and more times" since she received it. Tr. 199. Employee reiterated that she never touched K.M. She agreed that K.M. said that Employee did touch her and knocked her glasses off. Tr. 199. Employee affirmed that she is not a manager at DMV and it is not her job to investigate allegations of misconduct committed by other employees. Tr. 200-2001. Employee affirmed that she cannot make disciplinary decisions. Tr. 201. Employee affirmed that it was her opinion that the DMV did not consider her statement that she submitted to the hearing officer in making their final decision. Tr. 203. She affirmed that Director Robinson did not tell her what his thoughts were. Tr. 204.

On redirect, Employee said she witnesses other employees cursing at each other in the processing center. Tr. 205. Employee said supervisors were presents and managers were aware. She said they would say that they're working on it. Tr. 205. Employee said that in the video that she viewed, K.M. was getting up from her desk that K.M. was coming toward her. Tr. 206. Employee stated that when she completed her written statement as identified in Employee Exhibit C dated December 10, 2024, she had not been provided with all the evidence. She was missing employee statements. She was not provided with all the videos used in the Evidentiary Hearing. Tr. 208.⁸

⁸ Agency asserted that Employee was provided the videos.

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Wanda Patten ("Patten") Vol. 3. Tr. Pp. 7-49

Patten is an investigator with the Office Service Integrity at DMV. Tr. 8. She explained that her role is to investigate any issue that impacts the integrity of the agency, including employee misconduct. Tr. 8. She stated that cases are referred to them by the Chief of Staff or one of the agency administrators. Tr. 8. She affirmed that she was assigned to investigate the October 15, 2024, incident between Employee and K.M. Tr. 8. She testified that her responsibilities for that investigation included identifying facts around the alleged incident. Tr. 9. She further testified that in her review, she relied on witness statements, available video and interview. Tr.9. She affirmed that this included written statements. Tr. 9. She recalled reviewing approximately nine (9) or ten (10) written statements and affirmed that she conducted in-person interviews with some of the individuals who provided written statements. Tr. 9. She did not recall the names of those she interviewed in person. Tr. 10. Patten testified that none of the written statements indicated that they saw Employee strike K.M. Patten also testified that in her in-person interviews, no one indicated that they saw Employee strike K.M. Tr. 10.

Patten affirmed that she reviewed video surveillance footage of the incident. Tr. 11. Patten testified that in her view of the video, she witnessed physical contact between Employee and K.M. Tr. 12. She said she saw Employee being escorted out by her supervisor. She said "on her way out, as she got in front of [K.M.'s] desk, she said [K.M.] I'm a fuck you up, leaned across the desk and struck K.M...once she struck K.M., K.M. reflexed...she raised her hand once she was struck." Tr.12. Patten affirmed that she saw Employee make physical contact with K.M. on the video. Tr. 13. Patten said there were no physical obstructions in the video. She described that the video was behind K.M. where K.M. was sitting. Tr. 13. She said she could clearly see Employee reach across and her hand strike K.M. and could see K.M.'s hand go up. Tr.13. Patten explained that K.M. had her back toward the camera. Tr. 14. When asked if K.M. had her back toward the camera and how she saw physical contact with the face, Patten explained that "she saw [Employee] actually reach across the front of K.M.'s desk and strike her." She noted she could see [Employee's] hand striking and she could see K.M.'s glasses fall off her face to the floor. Tr. 14. Patten testified that she has been an investigator for 30 years and that she has investigated many alleged physical assaults between individuals. Tr. 15.

Patten stated that she could not speak to whether it is more common for individuals to use their dominant hand to engage in physical assault. Tr. 15. She testified that in her experience, "people use whatever hand is handy." Tr. 15. Patten testified that K.M.'s face was not clearly visible in the video footage that she reviewed. When asked if she could see K.M.'s face, she replied "No. watching, looking at the back of [K.M.'s] head." Tr. 16. Patten said that there were no limitations in the video footage. She explained that "the video footage, taken, with you know, her comments less than 20 seconds before she left out the office. I'm going to lose my motherfucking job over here, you know with her...[was] really a pretense to that she did...going by and slapping her." Patten said the video was clear and the audio was clear. Tr. 17. When asked about her testimony that she saw K.M.'s hand raise because of the physical contact and if it were possible that K.M. raised her hand to strike Employee, Patten answered "No." Tr. 18. Patten testified that in her experience she has not investigated any other alleged physical assaults between employees at the DMV. Tr. 18. She affirmed that she investigated other altercations between employees that included cursing or profanity. Tr. 18. Patten affirmed that in reaching her conclusions, she considered whether witness accounts corroborated one another. Tr. 20. She explained that she appreciated that no one said that they actually saw or were in a position to see the strike. She also said she considered Employee's statement that she did not hit K.M. Tr. 20.

When asked if all the witness statements indicated that no one observed a physical assault contemporaneous to the actual incident and how it was possible that she reached a different conclusion; Patten explained that she “reviewed the video footage and listened to Employee’s statement before, less than 30 seconds before reaching K.M.’s desk.” Tr. 29. She also said that K.M. said “she hit me” which was consistent with what she viewed on the video. Tr. 21. In review of the video footage, Patten identified the processing center on the second floor of 95 M Street. Tr. 24. At timestamp 14:02:08, she identified K.M. and Antoya Pearson. She also identified that Employee was about to walk by K.M. Patten noted that the quality of this video was bad. She testified that the video version that she had was much clearer. Tr. 26. When asked if she could see K.M.’s face, she noted that “of course I can’t see K.M.’s face, I’m looking at the back of K.M.’s head.” She again reiterated that the quality of the video was not good. Tr. 27. Patten said that she was able to clearly see Employee’s hand waving going toward K.M.’s face. She again reiterated that the video was not a good copy. Tr. 27. Patten testified that in her experience the quality of the video would make it easier to see “K.M.’s face and her glasses flying off her ace and Employee’s hand going toward K.M.’s face.” Tr. 27. Patten was asked to identify where she saw K.M.’s glasses come off; she again noted that the video was a “terrible copy.” Patten testified that the quality of the video she reviewed allowed her to see Employee’s hand coming toward K.M. Tr. 28.

When asked how she established that there was physical contact between Employee and K.M., if she could not clearly see K.M.’s face and could not clearly see Employee’s or K.M.’s hand; Patten again testified that the video copy she had came directly from the server and it was much clearer than the one being shown at the hearing. Tr. 29. Patten was told that the video was the same and stated that “I don’t know why it looks the way it looks, that your copy is much darker and the way you’re playing it, its pixelating...it’s not a good copy.” Tr. 29. Patten testified that the video she had was much clearer and she watched it many times. Tr. 30. Patten reiterated that in review of the video being shown, she is looking at the back of K.M.’s head. She said that “but I do see, I do, considering the preponderance of evidence, I do hear [Employee’s] statement about fucking her up and losing her job, and 20 seconds later I see [Employee] being escorted out of the office and reaching across [K.M.’s] desk and coming towards [K.M.’s] face and [K.M.] immediately reaching up her hand as to deflect or protect herself, and then immediately picking up her glasses.” Tr. 30.

Patten affirmed that she created an investigative report for this incident. Tr. 32. She submitted the report to the Chief of Staff, Mr. Tyrone Sweatt. Tr. 33. Patten testified that no one spoke to her about whether her investigative report was relied upon in the Agency making a determination about this matter. Tr. 33. Patten affirmed that her role in the investigation ceased when she turned in the report. Tr. 33. Patten testified that her investigation revealed that there was some conversation in the break room about union ballots and that she knew “[K.M.] offered some advice as to how it should be done, and from there tempers seemed to flare between [K.M.] and [Employee.]” Tr. 34.

On cross-examination, Patten testified that as part of her investigation, she reviewed the video “probably 50 or 60 times.” Tr. 35. She affirmed that there were three (3) separate videos with three (3) separate vantage points. She affirmed that the video that she just watched was one of those she viewed during her investigation. Tr. 36. She affirmed that when she did her video review, she enlarged the video to see more closely and that she went frame by frame. Tr. 36. Patten testified that based on her video review and preponderance of the evidence, she concluded that Employee had assaulted K.M. Tr. 36. She affirmed that the video she reviewed had audio. She also affirmed that she heard Employee physically assault K.M. Tr. 36. Patten explained that prior to being escorted out she heard Employee say, “I’m going to lose my motherfucking job here today...I’m not playing with that bitch.” Patten stated that “immediately after saying that, not even 20 seconds, ..[Employee] approached [KM] and

made the statement [KM] I am going to fuck you up...and when she was saying that [Employee] reached across and [Patten] heard a sound that sounded like a slap.” Tr. 37.

Patten affirmed that she stands by the findings documented in her investigative report. Tr.37. She stated that she found that Employee violated Chapter 16, specifically 1607 “where her on duty conduct should have known that it was a violation of not only D.C. Code, but rules and regulations of the agency as well.” Tr. 38. Patten reiterated that Employee’s conduct was verbally abusive and that it is prohibited by the DMV employee handbook. Tr. 39. She affirmed that the DMV handbook also prohibits physical assault with another employee. Tr. 39. She affirmed that she found that Employee violate these rules.

On redirect examination, Patten was asked to describe what she meant by “preponderance of the evidence.” Patten said that “[Employee] really kind of signaled that before she left the office that day, that there was something that was going to happen that was so egregious that she would lose her job.” Tr. 40. Patten again reiterated Employee’s statements of “losing her motherfucking job and I’m going to fuck you up.” Tr. 40. Patten affirmed that preponderance of the evidence does not indicate 100% certainty, but “she had to consider all of that in making [her] decision and looking at all the evidence.” Tr. 41. When asked if any of the videos she viewed clearly showed K.M.’s face, Patten said that one of the videos “showed her getting up”, the other “showed the back of K.M.’s head” and the third “does show K.M., but I don’t recall whether it actually shows her face or not.” Tr. 42. Patten testified that video from the back clearly showed Employee’s hand reaching across to strike K.M. and “K.M. out of I guess, reflex, raising her hand, and her glasses falling off, and then K.M. jumping up and picking up her glasses.” Tr. 43. Patten reiterated that she could not see the front of K.M.’s face in any of videos. Tr.43. Patten did not agree that it was possible that the alleged sound she heard was K.M. slapping Employee’s hand. Tr. 43.

The Administrative Judge questioned where Patten reviewed the video footage she obtained from the server. Tr. 46. Patten explained that it was downloaded directly from the service and that she watched it on her work desktop screen. Tr. 46. She affirmed that she reviewed the videos at least 50 or 60 times. When asked whether the videos had specific software, Patten said it was on software and she was not sure why Employee’s video quality was so poor. Tr. 47. Agency’s representative asked Patten if she showed Employee and her representative the video that she downloaded from her server and she stated that she did. Tr. 48.

The Administrative Judge allowed the Agency to make a proffer about rebuttal witness identified on the second day of the hearing. Agency’s representative noted that she would no longer be making a proffer in this regard.

SUMMARY OF THE PARTIES POSITIONS

Agency’s Position

Agency avers that it had cause to terminate Employee based on the incident that occurred on October 15, 2024, and that its decision was supported by substantial evidence. Agency asserts that it “properly terminated Employee for conduct prejudicial to the District under 6B DCMR §1605.4(a) and 6B § 1607.2 (a)(15).”⁹ Agency contends that “much of the altercation between Employee and [K.M.] is undisputed.” Agency further provides that “Employee, [K.M.] and other DMV witnesses *all* agree

⁹ Agency’s Closing Argument at Page 16. (May 27, 2026).

that a verbal altercation occurred between [K.M.] and Employee over union issues (emphasis in original)”¹⁰ Agency cites that, “[K.M.] told Employee she was going to jail...[and] Employee responded by yelling screaming and swearing in the Processing Center – all captured on video.”¹¹ Agency avers that Employee threatened K.M., called her bitch and stated “[K.M.] I’m going to fuck you up.” Agency asserts that the altercation escalated when Employee walked by K.M.’s desk “leaned into [K.M.’s] cubicle, struck [K.M.’s] face with her left hand, and knocked [K.M.’s] glasses off her face.”¹² Agency notes that Pearson, Employee’s supervisor, and other staff tried to separate Employee, but “Employee continued to push against Pearson to get to [K.M.] while repeatedly screaming, ‘I’m going to fuck that bitch up.’”¹³ Agency asserts that K.M. “consistently reported that she was a victim of a strike when talking to Pearson, Cobb, and Patten and in her written statement.”¹⁴ Agency contends that K.M.’s “report that Employee struck her is supported by substantial evidence.”¹⁵

Agency argues that Employee’s claim that she did not strike K.M. is “unsupported by the evidence.” Agency avers that the investigator, Wanda Patten (“Patten”), noted that “the strike could be heard on the video and that both Cobb and Patten saw K.M.’s glasses fly off...and later in the video, K.M. is seen bending down and picking up her glasses.”¹⁶ Agency asserts that other witnesses present in the processing center on the day of the incident had “obstructed views”. That noted, Agency maintains that “although no witnesses saw the strike, the video evidence is clear that Employee struck [K.M.]”¹⁷ Agency further contends that “even if OEA finds that Employee failed to make actual contact with [K.M.] face, DMV still had ample case to discipline Employee.”¹⁸ Agency avers that Employee’s statement to K.M. “I will fuck you up,” was a “threat of bodily harm”.¹⁹ Agency also asserts that its charge of “conduct prejudicial to the District, includes not just assaulting, fighting, or attempting to inflict harm, but also the act of threatening.”²⁰ Agency avers that “Employee repeatedly threatened [K.M.]” Agency maintains that this was a violation of District law and “DMV’s zero-tolerance policy and therefore warranted discipline on its own.” Agency maintains that “whether Employee made contact with [K.M.’s] face is therefore irrelevant because even if no physical contact occurred, Employee violated 6B DCMR §1605.4(a), 6B DCMR 1607.2(a)(15), and DMV rules by making a verbal threat and then, at minimum attempting to physically harm [K.M.]”²¹

Agency also asserts that Employee’s testimony and claims that she did not strike K.M. lack credibility. Agency avers that Employee’s claim that she and K.M. were pointing at each other are unsupported by the video.²² Agency also asserts that Employee’s testimony was inconsistent and “simply unreliable.”²³ Agency also contends that Employee’s claims are “largely self-serving.”²⁴ Agency further contends that if Employee is “found to be the perpetrator of physical violence, she will lose her job, could be subject to criminal charges, and might be subject to an order of protection...[s]he

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at Pages 16-27.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at Page 17.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at Pages 17-18.

²² *Id.* at 18.

²³ *Id.*

²⁴ *Id.*

has everything to lose.”²⁵ Alternatively, Agency avers that [K.M.] provided consistent and corroborating statements each time that she described the incident.”²⁶ Agency also contends that Employee “attempts to justify her misconduct by painting [K.M.] as the aggressor, but Employee’s behavior was entirely inexcusable and contrary to the law.”²⁷ Agency maintains that employees cannot make threats of bodily harm and that Employee’s behavior was never justified. Agency also notes that “DMV disciplined [K.M.] for her verbal statements on October 15, 2023, with a 25-day suspension. DMV found that [K.M.] engaged in verbal quarreling but did not engage in a physical altercation.”²⁸

Agency maintains that its investigation was thorough and that it substantiated Employee’s misconduct.”²⁹ Agency provides that its investigation was conducted by “obtaining written statements, interviewing Processing Center employees and reviewing surveillance video from three different viewpoints.”³⁰ Agency asserts that “while no one other than [K.M.] saw the actual strike, DMV’s determination that Employee struck [K.M.] is supported by the evidence.” Agency cites that “other DMV employees who reported not seeing a strike lacked a clear line of sight as evidenced either by their testimony or the video evidence.”³¹ Agency contends that “a human witness to the incident is unnecessary...” Agency maintains that its determinations were supported by the video evidence, [K.M.’s] statement, Employee’s conduct and Pearson’s observations.”³² As such, Agency avers that its decision to separate Employee was appropriate under the circumstances.

Agency avers that it “thoroughly considered each *Douglas* factor and determined that termination was the most appropriate remedy.”³³ Agency notes that Rakonda Cobb, the proposing official, “described in detail at the Hearing her full consideration of the *Douglas* factors and the process of completing the Proposing Official’s Rationale Worksheet documenting her analysis.”³⁴ Agency asserts that Cobb noted that she lost confidence in Employee’s ability to do her job, and that she did not have a potential for rehabilitation. Agency also avers that Cobb testified that the termination was in accordance with the Table of Illustrative Actions.”³⁵ Agency also notes that Gabriel Robinson (“Robinson”), the Deciding Official, “reviewed the Notice prepared by Cobb and its attachments, Employee’s response to the Notice, the Proposing Official’s Rationale Sheet, and the Hearing Officer’s report.”³⁶ Agency also avers that Robinson noted that this was a serious offense and testified that “substantial evidence indicated that Employee engaged in an act of physical violence in the Processing Center on October 15, 2024.” Further, Agency notes that Robinson testified that “even if Employee did not make physical contact with [K.M.], Employee’s attempt to strike [K.M.] violated DMV’s zero tolerance policy and alone warranted termination.”³⁷ Agency maintains that the video evidence captures a “dangerous and frightening situation” and that Employee “offered no testimony other than self-serving statements that she did not engaged in the acts of misconduct charged by DMV.”³⁸ Agency asserts that the OEA should sustain its “reasonable penalty selection.”³⁹

²⁵ *Id.* Pages 18-19.

²⁶ *Id.* at Page 19.

²⁷ *Id.*

²⁸ *Id.* at Footnote 8.

²⁹ *Id.* at 19.

³⁰ *Id.*

³¹ *Id.* at 20.

³² *Id.*

³³ *Id.* at Page 21.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at Page 22.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Agency also asserts that Employee's Motion for Partial Summary Judgment filed on November 18, 2025, should be denied. Agency avers that Employee "seeks summary disposition as to the issue of whether Employee struck another DMV employee [K.M.], by referring to a separate unemployment compensation matter [where] the District of Columbia Department of Employment Services (DOES)⁴⁰ found that [Employee] did not strike [K.M.]."⁴¹ Agency contends that in accordance with the rulings of the District of Columbia Court of Appeals (DCCA), that "any findings made by DOES on the issue of whether Employee struck [K.M.] have no preclusive effect before OEA."⁴² To this end, Agency argues that "collateral estoppel does not preclude OEA from fully litigating the pending matter."⁴³

Agency argues that this matter should be evaluated in consideration of a June 4, 2026, Opinion and Order (June 4th O&O) issued by the OEA Board in the matter of *[Employee] v DMV*.⁴⁴ Agency requests that "OEA considered the *[Employee v. DMV]* Opinion along with DMV's closing argument." Agency avers that the facts in the *Employee v. DMV* matter are "nearly identical" to that of the instant matter.⁴⁵ Agency asserts that in consideration of both matters, that the notice is substantially similar and that the exact sections of the DPM, and the DMV Employee handbook were noted in the charges.⁴⁶ Agency cites that in the June 4th O&O, the Board "determined that termination was included in the range of penalties for a first violation of 6B DCMR 1607.2(a)(15)...and the OEA Board found that DMV's termination was appropriate."⁴⁷ Wherefore, Agency asserts that it had cause to discipline Employee and that its penalty of termination was appropriate and should be sustained.

Employee's Position

Employee asserts that the "Agency's charging document is legally deficient." Employee avers that she was charged under "6B DCMR §1605.4(a) conduct prejudicial to the district of Columbia government," without identifying which of the four specific subsections she allegedly violated."⁴⁸ Agency avers that with the four subsections are "distinct and separate grounds for grounds for discipline, each carrying different legal implications and defenses."⁴⁹ Employee asserts that the D.C. Superior Court has held that an agency's "failure to specify/identify charges underlying a proposed termination, deprives employees of the notice to which they are entitled and the opportunity to defend themselves."⁵⁰ Employee argues that as a matter of law, Employee's termination should be reversed on this ground.

Employee avers that assuming the Agency cited the appropriate DCMR provisions in "both the Notice of Proposed Removal and the Final Agency Decision, the Agency failed to prove what it

⁴⁰ It should be noted that Agency refers to DOES, however, the record reflects that the matter was held before the District of Columbia Office of Administrative Hearings (OAH).

⁴¹ Agency's Response to Employee's Motion for Partial Summary Disposition (December 8, 2025).

⁴² *Id.* at Page 4. Citing to *Jahr v. D.C. Off. Of Emp. Appeals*, 19 A.3d 334, 335 (D.C. 2011). See also Page 3. Agency asserts that the DCCA held in that matter that "the law is the District is clear that unemployment compensation decisions have no preclusive effect on other adjudicatory proceedings between the employer and the employee."

⁴³ *Id.* at Page 3.

⁴⁴ Agency's Notice of Supplemental Authority at Page 1 (June 5, 2026). Citing to OEA Matter No. 1601-0046-24.

⁴⁵ *Id.* at Page 3.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Employee's Closing Argument at Page 16. (May 19, 2026).

⁴⁹ *Id.*

⁵⁰ *Id.* citing to *Office of the Attorney General v. Office of Employee Appeals*, D.C. Superior Court 2019 CA 5287 P(MPA) (July 16, 2020); and *[Employee] v. District Department of Transportation*, OEA Matter No. 1601-0054-19 (January 19, 2021).

charged.”⁵¹ Employee argues that the Agency must “prove the specific misconduct it charges, not merely surrounding circumstances that suggest misconduct may have occurred.”⁵² Employee asserts that Agency has “pushed the narrative that [Employee] initiated physical contact with [K.M.] and as a result her termination was justified.”⁵³ Employee contends that Agency attempts to established the “alleged strike through three categories of evidence: (1) testimony describing what witnesses heard after the incident; (2) characterization of [Employee’s] demeanor and movement; and (3) video footage.” Employee avers that “none of these forms of proof satisfies the Agency’s burden.”⁵⁴ Employee cites that “no witness observed the strike” and that Pearson did “not testify to observing physical contact; she testified she heard [K.M.] say she had been hit.”⁵⁵ Employee notes that “Cobb could not testify to observing contact...[and] Robinson acknowledged [K.M.’s] hand was raised during the interaction, a detail affirmatively inconsistent with a unilateral strike.”⁵⁶ Employee also provides that “Patten asserted a conclusion of a slap but could not identify [K.M.’s] face or [Employee’s] hand at the critical moment in the video.”⁵⁷ Employee avers that the other witnesses J.B, T.M, and K.D, “all testified that they did not see a strike and provided consistent corroboration of the events leading up to and including the confrontation.”⁵⁸

Employee maintains that the video does not depict physical contact between Employee and K.M. Employee asserts that it does not show a “punch, slap, or identifiable physical contact.” Employee contends that “movement is not assault...proximity is not contact...agitation is not proof.”⁵⁹ Employee cites that “where video evidence is equally consistent with multiple interpretations, including non-contact movement, it cannot carry the Agency’s burden under the preponderance standard.”⁶⁰ Employee argues that Agency’s “case ultimately rests on the following inferential chain, because [Employee] was angry, because she moved toward [K.M.], and because [K.M.] later said she had been hit, a strike must have occurred.”⁶¹ Employee asserts that “Cobb tried to interpret the pop she heard as [Employee] striking [K.M.] [and] Patten alluded to the same inferences.”⁶² Employee maintains that these inferences are legally insufficient and that “it does not established that a strike is more likely than not to have occurred; it established only that a strike is one of several possible explanations.”⁶³ Employee avers that Agency failed to meet its burden to prove that an assault occurred and “because there was no assault, the Agency reliance to terminate [Employee] under 6B DCMR § 1605.4(a) and the Table of Illustrative Actions pursuant to 6B DCMR §1605.(a)(15) is in error.”⁶⁴

Employee avers that Agency’s failure to produce K.M. to testify at the hearing warrants an adverse inference against Agency. Employee asserts that “Agency built its case around [K.M.s] claim that [Employee] hit her.”⁶⁵ Employee provides that “Agency failed to call [K.M.] on day one of the hearing...[and] [Employee’s] representatives did not receive notification until the morning of the

⁵¹ *Id.* at Page 17.

⁵² *Id.* citing to *Parker v. U.S. Postal Serv.*, 819 F.2d 1113, 1115 (Fed. Cir. 1987).

⁵³ *Id.* at Page 17.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 18.

⁵⁸ *Id.*

⁵⁹ *Id.* at 18.

⁶⁰ *Id.* at 18.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at Page 19

⁶⁵ *Id.*

hearing.”⁶⁶ Further, Employee avers that the OEA permitted “remote testimony for [K.M.] [and] despite that accommodation, she failed to appear.”⁶⁷ Employee maintains that K.M.’s failure to appear is “not a neutral evidentiary gap....it is a critical omission that warrants a strong adverse inference and independently confirms that Agency has not met its burden of proof.”⁶⁸ Employee cites that it is well established that “where a party has it peculiarly within its power to produce a witness whose testimony would elucidate the transaction, and fails to do so, the factfinder may draw the inference that the testimony would not have been favorable.”⁶⁹ Employee argues that the failure to have K.M. testify under oath and “be subject to cross-examination, deprived this tribunal of the opportunity to assess her credibility, consistency, and perception given the record’s evidence of her own history of verbal antagonism and physical conduct toward co-workers.”⁷⁰

Employee contends that the OEA should give consideration and weight to the ruling issued by the Office of Administrative Hearings (“OAH”) in a matter related to the same October 15, 2024, incident at issue in this matter. Employee asserts that the OAH “determined that the record was insufficient to establish disqualifying conduct..[and] that the video omits physical actions and reactions one would expect to see if [Employee] hit [K.M.] in the face knocking her glasses to the floor.”⁷¹ Employee avers that “to the extent the doctrine of collateral estoppel, issue preclusion applies, the Agency should be precluded from relitigating whether [Employee] committed a physical assault on [K.M.] that warranted discipline.”⁷² Employee maintains that “even if [OEA] declines to apply formal collateral estoppel on the grounds that legal standards differ between unemployment and adverse action proceedings, the OAH decision remains highly probative persuasive authority.”⁷³

Employee avers that even if the OEA “sustains any portion of the conduct charged, the penalty of termination cannot stand.”⁷⁴ Employee cites that the Agency’s determination was “arbitrary, capricious, and abuse of discretion...”⁷⁵ Employee further provides that the Agency “ignored mandatory discipline requirements, failed to conduct a meaningful *Douglas* analysis, and imposed termination on a thirty-two (32) year employee without any prior discipline, all while imposing a lesser penalty on the co-worker whose sustained provocation precipitated the incident.”⁷⁶ Employee avers that the Agency “cannot justify the most severe penalty available by asserting the seriousness of an allegation it has not even proven.”⁷⁷ Employee also notes that the *Douglas* factor analysis failed to give due consideration to mitigation. Employee also notes that the Employee’s penalty is not consistent in that it terminated her, but imposed a suspension on K.M.⁷⁸ Employee also avers that Agency gave no consideration to the potential for rehabilitation for her as a 32-year employee with no prior

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* citing to *Graves v. United States*, 150 U.S. 118, 120 (1893).

⁷⁰ *Id.* at 20.

⁷¹ *Id.* at Page 20. See also. Employee’s Motion for Partial Summary Judgment at Page 5. Employee cites that the Administrative Law Judge (ALJ) at OAH ruled that “considering the record as a whole, I conclude that [Employee] did not strike [K.M.] in the face.”

⁷² *Id.* at Pages 20-21.

⁷³ *Id.* The undersigned finds that OEA’s review of this matter is de novo. Wherefore, the OAH ruling in this matter does not inform the determinations made by this tribunal. As such, Employee’s Motion for Partial Summary Judgment is Denied.

⁷⁴ *Id.* at 21.

⁷⁵ *Id.* citing to *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981) and *Stokes v. District of Columbia*, 502 A.2d 1005 (D.C. 1985).

⁷⁶ *Id.* at Pages 21-22.

⁷⁷ *Id.* at 22.

⁷⁸ *Id.*

disciplinary history.⁷⁹ Employee cites that she has expressed remorse for her actions and that if she were returned to work she would comply with all DMV policies.⁸⁰ Employee also contends that Agency failed to and ignored consideration of mitigating factors in accordance with *Douglas* Factor 11. Employee avers that *Douglas* Factor 11 “expressly identifies harassment and provocation on the part of others involved in the matter, as mitigating circumstances.”⁸¹ Employee avers that the Agency “conspicuously ignored” that “she was subjected to sustained verbal antagonism by [K.M.], including threats of jail and job loss, being called a bitch, all while supervisors were present and belatedly intervened.”⁸² Further, Employee asserts that contemporaneous to the time of the incident, she had faced great personal difficulty and familial loss that the Agency was aware of. Employee avers that the Investigative Report “acknowledged that [K.M.] initiated and provoked the incident that result in a verbal altercation between coworkers.” Employee avers that the Agency’s “decision to terminate [her] for breaking under these circumstances, while imposing minimal penalties on [K.M.], reflects a complete failure to apply [*Douglas*] Factor 11.”⁸³

Employee avers that Agency engaged in disparate and “unreasonable” treatment in its decision to terminate her from service. Employee reiterates that she was terminated, while K.M. received a suspension. Employee avers that “an agency cannot knowingly and intentional treat similarly situated employees differently.”⁸⁴ Employee asserts that “[K.M.] is the single most compelling comparator in this record, and she is not merely like [Employee] she was the other party to the very same incident, under the same supervisors on the same day, at the same worksite.”⁸⁵ Employee avers that three witnesses corroborate that on October 15, 2024, K.M. entered a breakroom with Employee and other employee, called them “derogatory names – bitches and dumb ass motherfuckers -, threatened them with jail and physically attempted to snatch completed paperwork from [Employee’s] hands.”⁸⁶ Employee also avers that “Director Robinson, through testimony, confirmed that [K.M.] received a suspension.” Employee avers that “the Agency may argued that [her] conduct was more serious because of the alleged physical strike...[but] Agency has failed to prove that [she] struck [K.M.].”⁸⁷ Employee argues that “without proof of a strike the case is reduced to a verbal altercation and threatening language, conduct that the record demonstrates has been tolerated by other employees with out discipline.”⁸⁸ As such, Employee avers that “under any reasonable application of the *Douglas* consistent requirement, that disparity cannot be sustained.”⁸⁹ Employee reiterates that the Agency’s investigation was deficient and that the procedural deficiencies with the issues of the Proposed Notice also reflects Agency’s failures in its administration of the action against her.

Employee argues that Agency’s filing of its Notice of Supplemental Authority “should be afforded little or no weight.”⁹⁰ Employee asserts that the *Employee v. DMV* matter cannot “cure the Agency’s evidentiary deficiencies” in the instant matter.⁹¹ Employee also notes that “Agency charged, investigated, decided and tried the [instant] matter as an alleged physical assault case...it cannot now

⁷⁹ *Id.* at Page 23.

⁸⁰ *Id.* at Page 24.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at Page 27.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Employee’s Response in Opposition to Agency’s Notice of Supplemental Authority (June 16, 2026).

⁹¹ *Id.* at Page 1.

convert that case into a fallback profanity, threat, and verbal-altercation case simply because the evidence of physical contact is disputed.”⁹² Employee also avers that the *Employee v. DMV* matter is “factually distinguishable in critical respects, including the Agency’s own written acknowledgement in this [instant] matter that [K.M.] instigated the argument and continued to taunt [Employee] – including using profanity – even after [Employee] attempted to end the argument.”⁹³ Employee also avers that Agency’s reliance on *Employee v. DMV* “ignores the penalty issue...even if some lesser misconduct was found the Agency has not show that removal remains reasonable under *Stokes* and *Douglas*.”⁹⁴ Employee also avers that Agency’s arguments create a problem with the Collective Bargaining Agreement (CBA) as it relates to progressive discipline and consideration of mitigation.⁹⁵ Employee avers that the “contractual requirement is significant because the Agency’s removal decision was premised upon its assertion that [Employee] committed a physical assault.”⁹⁶

Employee asserts that the Agency “cannot simultaneously argue that assault need not be proven because profanity or verbal hostility alone are sufficient while ignoring the [CBA’s] express requirement that progressive discipline be applied and mitigating factors be considered.”⁹⁷ Employee also avers that she “sought to explore disparate treatment regarding, cursing, profanity, and similar altercations...the Agency objected.”⁹⁸ Employee asserts that the “hearing remained focused on the incident at issue and the alleged physical assault.” Employee asserts that the “Agency cannot have it both ways...if profanity and verbal altercation were not independently central enough to permit full comparator inquiry during the evidentiary hearing, they should become independently central enough after the hearing to sustain removal if the assault allegation fails.”⁹⁹ Employee reiterates that the Supplemental Authority should be given little or no weight and that this matter “must be decided on the record.” Employee avers that Agency failed to meet its burden and that the action should be reversed.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In the instant matter, Employee was terminated from her position as a Legal Instruments Examiner (LIE) following a Final Notice dated March 7, 2025. Employee was terminated from service, effective March 14, 2025, for the following: “On October 15, 2024, you had a verbal and physical altercation with another employee while on duty in violation of 6B DCMR 1605.4(a).” The Final Notice cited therein that the Deciding Official adopted “the evidence, recommendations, rationale and conclusions of the proposing official and administrative review officer.” There were two (2) Proposed Notices issued in the instant matter, the initial one issued by Rakonda Cobb on December 4, 2024, and the revised one issued on January 7, 2025.¹⁰⁰ Employee filed a Petition for Appeal on March 17, 2025.

⁹² *Id.*

⁹³ *Id.* at 2.

⁹⁴ *Id.*

⁹⁵ *Id.* at Page 14.

⁹⁶ *Id.*

⁹⁷ *Id.* at Page 15.

⁹⁸ *Id.* at Page 16.

⁹⁹ *Id.*

¹⁰⁰ Agency’s Answer filed on April 15, 2025, did not include the December 5, 2024, initial Proposed Notice. The January 7, 2025 Proposed Notice cited to charges in violation of 6B DCMR §1605.4(a) Conduct Prejudicial to District of Columbia Government. The January 7, 2025 Notice referenced the Table of Illustrative Actions in the Rationale Worksheet under Section 7 – Consistent with Table of Illustrative Actions. It cited 1607.2 (a)(15).

ANALYSIS¹⁰¹

Whether Agency had cause for adverse action

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

- (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant
- (b) to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. *(Emphasis added).*

Pursuant to OEA Rule 631.2 (December 27, 2021), Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Additionally, DPM § 1603.2 provides that disciplinary actions may only be taken for cause. As was previously cited, Employee was terminated from service for violation of 6B DCMR § 1605.4(a) Conduct Prejudicial to District Government. Employee's termination was based off an incident that occurred on October 15, 2024, wherein she and another employee, K.M., were involved in a disturbance at the workplace. The Final Notice provided a narrative citing that both employees were calling each other names (bitches) and that Employee was screaming and yelling despite attempts to calm her down. The Final Notice narrative cites that Employee struck K.M. and knocked her glasses off her face. Agency avers that it had cause to discipline Employee. Agency maintains that Employee physically assaulted K.M., and that it warranted termination. Agency avers that even if this tribunal does not determine that Employee physically assaulted K.M., it has met its burden and shown it had "ample cause to discipline" Employee. Agency also avers that the video evidence shows that Employee physically assaulted K.M., and that K.M.'s statements that she was hit were consistent and corroborated by the video. Agency avers that Employee's account and claims were not credible. Agency maintains that it met its burden and that the action should be sustained.

Employee avers that Agency has failed to meet its burden to show it had cause to terminate her from service. Employee asserts that the video evidence that Agency relies upon does not show that she struck K.M. Employee maintains that she was cursing and that was inappropriate, but that she never physically assaulted K.M. Employee also avers that Agency's Notice is deficient in that under 6B DCMR 1605.4(a), there are enumerated subsections that Agency failed to include. Employee avers that this failure is legally insufficient, as it did not provide her with adequate notice of what she was charged with violating. Employee asserts that Agency's case rests largely on the inferences made by

¹⁰¹ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See. *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

the investigator and from the statements she obtained from K.M. Employee also argues that Agency's failure to produce K.M. to testify warrant an adverse inference in this tribunal's considerations.

Conduct Prejudicial to District of Columbia Government 6B DCMR §1605.4(a)

In the instant matter, Employee was charged with violation of the aforementioned provision. The undersigned agrees with Employee that Agency failed to include one of the five (4) enumerations under that section of the code provision.¹⁰² Agency asserts that in the Proposing Officials Rationale Sheet, its reference to the Table of Illustrative Actions section 1607.2 (a)(15), is sufficient to meet the notice requirements of the charges against Employee. Agency asserts that this is not an issue because this provision is broad and that the inclusion of the reference to the section of the Table of Illustrative Actions is sufficient to satisfy notice. Further, Agency avers that an Opinion and Order issued by the OEA Board on June 4, 2026 (June 4th O&O)¹⁰³, supports its position that the charges in that matter were written in the same way as in this instant matter. Employee notes that Agency's failure to enumerate the code provision for the charges is legally insufficient. Further, Employee avers that the Agency's request to consider the June 4th O&O should be given little to no weight because the matters are not as similar as Agency claims.

OEA has held and D.C. Superior Court has affirmed, that an agency's failure to specify/identify the charges underlying a proposed termination, deprives employees of the notice to which they are entitled and the opportunity to appropriately defend themselves.¹⁰⁴ The D.C. Court of Appeals has held in accordance with *Office of the D.C. Controller v. Frost*, 638 A.2d 657, 662 (D.C. 1994), that "an employer is required to provide an employee, against whom an adverse action is recommended, with advance written notice stating any and all causes for which the employee is charged and the reasons, specifically and in detail, for the proposed action."¹⁰⁵ The Court also noted that the *Frost* holding found that "the purpose of requiring a specification of the details is to apprise the employee of the allegations he or she will be required to refute or the acts he or she will have to justify, thereby affording the employee a fair opportunity to oppose the proposed removal." *Frost*, 638 A.2d at 662. Further, the OEA Board has held that when there are different charges that carry different penalties, an employee must be given appropriate notice of those underlying charges to be able to adequately be able to refute them. The Board found that a failure to specify these charges deprive employees of the opportunity to oppose the proposed disciplinary action (in that matter the action was termination)."¹⁰⁶ Here, I find that Agency failed to fully enumerate the charges in its Proposed Notice and Final Notice.

This stated, because the Proposed Notice and Final Notice incorporated the Proposing Official's Rationale Worksheet, which enumerated the charge under 1607.2 (a)(15), the undersigned finds that Agency's error in failing to enumerate within the charge of the notice itself constitutes harmless error. The undersigned would note that had Agency failed to otherwise identify the enumeration in the Rationale Worksheet and include it with the Notice that its action would have not met the aforementioned requirements and would have constituted a failure to follow all appropriate

¹⁰² Those four include: (1) conviction of a felony; (2) conviction of any criminal offense that is related to the employee's duties or his or her agency's mission; (3) conduct that an employee should reasonably know is a violation of law or regulation; and (4) off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects the employee agency's mission or has an otherwise identifiable nexus to the employee's position.

¹⁰³ See. *Employee v. DMV supra*.

¹⁰⁴ *Office of the Attorney General v. Office of Employee Appeals*, D.C. Superior Court 2019 CA 5286 P(MPA) Pages 5-6. (July 16, 2020).

¹⁰⁵ *Id.*

¹⁰⁶ *Rachel George v. Office of the Attorney General*, OEA Matter No. 1601-0050-16 *Opinion and Order on Petition for Review* (July 16, 2019).

procedures in its administration of the instant action. As such, the undersigned's review of this matter is in consideration of the charge of conduct prejudicial to District Government as enumerated in 1607.2(a)(15) which includes "assaulting, fighting, threatening, attempting to inflict or inflict bodily harm while on District property or while on duty." This noted, the undersigned finds that Agency's request for consideration of the Supplemental Authority in this matter should be denied. The undersigned finds that *the Employee v. DMV* matter is not final. As of June 15, 2026, the matter is pending appeal in the Superior Court for the District of Columbia. As such, the undersigned cannot rely on that authority as it is not yet dispositive on the assertions for which Agency avers should be considered.¹⁰⁷

Here, Employee was charged with physically assaulting another employee (striking K.M.), and as a result, the undersigned must consider the elements of assault. "The elements of assault are that the employee (1) must have made an attempt with force of violence to injure another; (2) with the apparent present ability to effect the injury; and (3) with the intent to do the act constituting the assault."¹⁰⁸ During the course of the Evidentiary Hearing in this matter, I had the opportunity to consider witness testimony and examine documentary evidence and view the video surveillance of the incident. It is uncontroverted that Employee and K.M. were involved in a verbal altercation. Agency avers that the video evidence clearly exhibit that Employee "struck" K.M. Further, Agency asserts that the investigator, Wanda Patten and the proposing and deciding officials in this matter determined in their review of the video that Employee struck K.M. in the incident that occurred on October 15, 2024, in the processing center. The undersigned has reviewed the video surveillance footage (of all the angles) at length in this matter, not only during the Evidentiary Hearing, but also in review of the exhibits in the preparation of the instant decision. The undersigned finds that none of the video evidence clearly shows that Employee struck K.M. The undersigned finds that the only person who "saw" the strike was K.M. and she was not presented to testify at the hearing. Further, the undersigned finds that K.M.'s statement that she was hit is not verifiable for credibility or veracity. It is also of note that all the statements from the witnesses who were present did not reflect that they witnessed Employee strike K.M.

The undersigned also finds that Investigator Patten's dismissal that the "pop" that she and Cobb heard while they viewed the video could have been Employee's and K.M.'s hands hitting, to be an odd conclusion given the evidence. The undersigned finds that Employee consistently testified and maintained that she did not strike K.M., that she pointed at her over her cubicle. The undersigned would also note that in review of the video footage, in contrast to what Patten, Cobb and Robinson interpreted, the undersigned found that K.M.'s actions did not reflect someone who had just been hit in the face. There is nothing in the video to suggest she grabbed her face, that she was hurt or anything that would follow a "slap or strike" to the face. Further, the undersigned finds that K.M.'s bending down to grab her glasses could have been the result of the overall interaction and not a face strike. Further, the undersigned would also note that given the situation and the testimony, if K.M. had been struck in the face, that security and/or the police would have been called to address Employee. This is of note given that Agency asserts that Employee's testimony was "self-serving" and she had everything to lose including facing possible criminal charges and/or an order of protection. This stated, I find that Agency has failed to show that Employee assaulted K.M. and that none of the three (3) elements have been proven by the record. Agency has not shown that Employee attempted a force of violence to injure, or effect injury, nor that there was an intent to conduct an assault.

¹⁰⁷ The action is currently pending in Superior Court in Case No. 2026-CAB-004112 before Judge Crowell.

¹⁰⁸ *Id.* citing *Stroman v. United States*, 878 A.2d 1241 (D.C. 2005).

Agency asserts that even if the OEA does not find that a physical assault occurred, that Employee's other actions still warranted discipline and that termination was appropriate. Namely, Agency further asserts that Employee's comments of "I'm going to fuck you up," were threatening under DPM section 1607.2(a)(15). Employee avers that Agency's cases rested on the physical assault and Agency cannot rely on the verbal altercation/threats to meet its burden. It is undisputed in the record that Employee was yelling, screaming profanity and saying to K.M. that she was going to "fuck her up." However, the undersigned finds that Agency's narrative in its final Notice does not reflect that. The narrative reflects that Employee called K.M. a bitch and said that "she was going to make me lose my job today." Further, the narrative cites that **both** K.M. and Employee were calling each other bitches in this time frame. (Emphasis added). In review of the record, I find that Employee's actions were inappropriate with regard to the cursing and yelling. This stated, Employee has raised a disparate treatment claim as it relates to the Agency's actions for disciplining her for the verbal altercation which warrants review.

Disparate Treatment

OEA has held that, to establish disparate treatment, an employee "*must* show that [they] worked in the same organizational unit as the comparison employees." (Emphasis added). They *must* also show that both the petitioner and the comparison employees were disciplined by the same supervisor for the same offense within the same general time period (Emphasis added). Further, "in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty." (Emphasis added). An employee must show that there is "enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to determine that the agency treated similarly situated employees differently...[i]f a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue."¹⁰⁹ Accordingly, an employee who makes a claim of disparate treatment has the burden to make a prima facie showing that they were treated differently from other similarly situated employees.¹¹⁰

To support this contention, Employee asserts that the most significant comparator here is K.M. Employee asserts that she and K.M. were involved in the same incident, on the same day, under the same supervisors, and held the same positions. Employee avers that K.M. was suspended for her actions and she was terminated, thus reflecting Agency's disparate treatment in this matter. The undersigned agrees. The record shows that for her involvement in this matter, K.M. received a 25-day suspension. Further, the Deciding Official, Director Robinson, noted that while he was not the deciding official for K.M., that he determined that Employee should be terminated because Employee had assaulted K.M., and that was egregious. He noted that K.M. received a "substantial suspension" but that her charges were based on the verbal altercation. As such, the undersigned finds that in consideration of the verbal altercation, Agency clearly disciplined Employee more harshly than it did the other Employee involved for the same behavior. Agency avers that Employee's comment that "I'm

¹⁰⁹ *Sheri Fox v. Metropolitan Police Department*, OEA Matter No. 1601-0040-17 (January 13, 2020). Citing to *Mills v. D.C. Department of Public Works*, OEA Matter No. 1601-0001-09, *Opinion and Order on Petition for Review* (December 12, 2011), citing *Manning v. Department of Corrections*, OEA Matter No. 1601-0049-04 (January 7, 2005); *Ira Bell v. Department of Human Services*, OEA Matter No. 1601-0020-03, *Opinion and Order on Petition for Review* (May 6, 2009); *Frost v. Office of D.C. Controller*, OEA Matter No. 1601-0098-86R94 (May 18, 1995); and *Hutchinson v. District of Columbia Office of Employee Appeals*, 710 A.2d 227, 236 (D.C. 1998).

¹¹⁰ See *John Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15 (March 1, 2017), citing to *Hutchinson v. D.C. Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 22, 1994). See also *Sheri Fox v. Metropolitan Police Department*, OEA Matter No. 1601-0040-17 (January 13, 2020).

going to fuck you up” was a threat of harm, however, the undersigned would note that K.M.’s threats of telling Employee she was going to jail and was going to lose her job are similar threats of harm. As such, *assuming arguendo* that the undersigned were to agree with Agency’s contention that Employee’s verbal actions were enough to sustain discipline, I find that Employee has met the requirements for a prima facie case of disparate treatment. I further find that Agency’s actions of disciplining Employee more harshly for the same conduct as K.M., exhibits that it engaged in disparate treatment and as a result, the action of termination cannot be sustained. Accordingly, I would also find that Agency has failed to meet its burden of proof that it had cause for adverse action in this matter.

Whether Penalty Was Appropriate

Based on the aforementioned findings, I find that Agency did not have cause for adverse action against Employee. As a result, I find that the penalty of termination was inappropriate under the circumstances. The undersigned also finds that Agency failed to appropriately consider the *Douglas* factors, namely the “*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*** (Emphasis added).”¹¹¹ It is of note that all of the witnesses cited that K.M. had initiated the verbal altercation on October 15, 2024. Further, I find that witness testimony also reflects that K.M., even initiated physical contact when she attempted to grab papers away from Employee, while calling her and others in the breakroom “dumb ass motherfuckers” and threatening that they would go to jail and lose their jobs for how they were conducting the union business. This clearly exemplifies harassment, unusual job tensions and provocation on the part of K.M. The undersigned finds that in not giving due consideration to *Douglas* Factor 11, that its *Douglas* analysis was inadequate in the instant matter. Wherefore, in consideration of the record, the undersigned finds that Agency’s action was not for cause and that the penalty of termination was not appropriate in this matter. As a result, I find that the removal cannot be sustained.

¹¹¹*Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981). 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 (emphasis added)
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

ORDER

Based on the foregoing, it is **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**.
2. Agency shall reinstate Employee to his position of record and reimburse Employee all back pay, and benefits lost as a result of her removal.
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, ESQ.
Senior Administrative Judge