

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹ ,	)	OEA Matter No. 1601-0051-25
Employee	)	
	)	
v.	)	Date of Issuance: August 5, 2026
	)	
D.C. METROPOLITAN POLICE	)	Michelle R. Harris, Esq.
DEPARTMENT,	)	Senior Administrative Judge
Agency	)	
	)	
Daniel J. McCartin, Esq., Employee Representative		
Jeremy Greenberg, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 20, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Metropolitan Police Department’s (“Agency” or “MPD”) decision to remove him from service. OEA issued a letter on June 20, 2025, requiring Agency to file an Answer to Employee’s Petition for Appeal. Agency filed its Answer to Employee’s Petition for Appeal on July 18, 2025. This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on July 23, 2025. On July 25, 2025, I issued an Order Convening a Prehearing Conference in this matter for August 26, 2025. Prehearing statements were due by or before August 19, 2025. Both parties submitted their Prehearing statements as required. Additionally, on August 19, 2025, Agency filed a Consent Motion to Substitute the Record to remove documents that contained Personal Identifying Information (“PII”).

On August 26, 2025, both parties appeared for the Prehearing Conference. During the Prehearing Conference, I found that because there was an Adverse Action Panel hearing in this matter, OEA’s review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). As a result, the parties were ordered to submit briefs addressing whether: (1) the Adverse Action Panel’s decision was supported by substantial evidence; (2) whether there was a harmful procedural error; and (3) whether Agency’s action was done in accordance with all laws and/or regulations.

On August 26, 2025, I issued an Order codifying the verbal order from the Prehearing Conference and setting the briefing schedule. Accordingly, Agency’s brief was due on or before

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

October 10, 2025, Employee's brief was due on or before November 14, 2025, and Agency had the option to submit a sur-reply brief by or before December 5, 2025. Both parties submitted all briefs in accordance with the prescribed deadlines. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether the Adverse Action Panel's decision was supported by substantial evidence;
2. Whether there was harmful procedural error;
3. Whether Agency's action was done in accordance with all applicable laws or regulations.

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.²

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.

STATEMENT OF THE CHARGES

In a Proposed Notice of Adverse Action dated May 17, 2024, Employee was charged with the following:

Charge No 1: Violation of General Order Series 120.21, Attachment A, Part A-6, which states, "*Violation of General Order Series 120.21, Attachment A, 6, which states, Engaging in conduct which constitutes a crime.*"

Specification No 1: In that on September 16, 2023, you committed larceny by shoplifting two pairs of Beats Headphones from the Fort Carson PX in violation of the UCMJ Article 121, Larceny and Wrongful Appropriation. You were

² OEA Rule "Definitions § 699.1."

observed in memorialized CCTV footage tampering with a theft detection device in an attempt to intentionally avoid detection while committing the Larceny. The value of the merchandise was \$318.00.

Charge No. 2: Violation of General Order Series 120.21 Attachment A, Part A-16, which states, “*Failure to obey orders or directives issued by the Chief of Police.*”

Specification No. 1: In that, you failed to notify the Metropolitan Police Department (MPD) of your arrest by military authorities on September 16, 2023. The MPD learned of your arrest one-hundred and sixteen (116) days after your arrest during a database integrity check. This misconduct is further described in General Order 120.20 Park II, 1 which states, “*When a sworn member is involved in misconduct (as defined in part II B 3 of this order) outside of the District of Columbia, whether on or off duty: 1. The member shall, as soon as practicable, notify the watch commander of his or her element through the CIC who shall notify IAD. IAD shall respond as may be appropriate under particular circumstances.*”

Charge No. 3: Violation of General Order Series 120.21, Attachment A, #11, which reads “*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would affect adversely the employee’s or the agency’s ability to perform effectively, or violations of any law of the United States or any law, municipal ordinance, or regulation of the District of Columbia.*”

Specification No. 1: In that on September 16, 2023, you were arrested for larceny after stealing two pairs of Beats Headphones from the Fort Carson PX. Following your arrest, you failed to make any notification to the MPD as required. Your criminal conduct and subsequent failure to report were unbecoming of an MPD Officer and brought discredit upon yourself and the MPD.

SUMMARY OF THE TESTIMONY

On March 20, 2025, Agency held an Adverse Action Panel hearing. During the hearing, testimony and evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as “Tr.”), generated and reproduced as a part of the Adverse Action Panel hearing.

Agency’s Case in Chief

Agent Richard Ehrlich (“Ehrlich”) Tr. Pp. 18 – 34

Ehrlich is assigned to the Internal Affairs Division and has been in this role for approximately 10 years. Tr. 19-20. He was assigned to investigate the allegations related to Employee. Ehrlich explained that he completed an investigation initiated by Agent MacDonald (“MacDonald”) before he retired. Tr. 20. Ehrlich affirmed that he reviewed an investigative report and related documents

completed by MacDonald. Ehrlich confirmed that Agency's Exhibit 2, starting at Bates No. 9, was MacDonald's report. Tr. 21. He did not find any errors in MacDonald's report. Ehrlich testified that Agency Exhibit 3, at Bates No. 88 was the supplemental report that he completed regarding Employee. Tr. 21.

Ehrlich explained that Employee was on military leave in Colorado. While there, Employee was at the PX on a US Air Force military base and was caught shoplifting headphones. Tr.22. Ehrlich testified that Employee did not tell MPD that he had been arrested for that offense as required. Ehrlich could not recall if the Air Force took any disciplinary action against Employee. Tr. 23. Ehrlich further explained that his investigation included an exchange of emails between himself and Mr. Larson, who was the manager of the PX. Tr. 23. He cites that Agency MacDonald's findings included video from the PX and documents related to Employee's military service. He affirmed that those were listed on Bates No. 22. Tr. 23. He also affirmed that his own findings were reflected on page 90 of that document. Tr. 23.

Ehrlich testified that based on the investigation, on September 16, 2023, Employee went into a PX on Fort Carson. He had been called to active duty and was assigned to the Air Force Academy, and he was receiving medical treatment at Fort Carson. Tr. 24. Ehrlich cited that Employee took two "Beats" headphones, by removing them from inventory control and placing them in the pocket of his cargo pants. Tr. 24. Ehrlich cited that this activity was caught on video and that Employee was stopped as he walked past the final register at the PX. Ehrlich noted that the conclusion that Employee had stolen the headphones was from the video recording. Tr. 24. [Video was Played]. Ehrlich identified Employee in the video and the actions around the Beats headphones. Ehrlich testified that Employee's body language in the video did not indicate that he just forgot that he put the Beats in his pocket. Tr. 27. Ehrlich affirmed that Employee was interviewed during IAD's investigation into this matter and stated at the end of the interview that he had stolen the headphones. Tr. 28. Ehrlich reiterated that he was not sure of what action the military took against Employee related to the theft but asserted that he was arrested by the military police on Fort Carson. Tr. 29. Ehrlich noted that MPD did not find out about Employee's arrested until approximately nine (9) or ten (10) months after the incident occurred, during a routine record search. Tr. 29. Ehrlich recalled that Employee was issued a Civil Recovery Notice for the funds, but he did not know the outcome of the military arrest. Tr. 30. Ehrlich cited that Employee did not challenge the Civil Recovery Notice and that the military recovered the money from Employee's retirement account. Tr. 30.

On cross-examination, Ehrlich testified that he did not conduct the investigation into the case nor did he interview Employee. [Audio of interview was played]. Ehrlich affirmed that in the audio recording, MacDonald was clarifying the record that Employee was never criminally charged. Tr. 31. Ehrlich was asked to review a statement by Nicholas Jefferson. Ehrlich read aloud that the statement indicated that "approximately 10 minutes later, he paid for the second black Beats headphone. After paying for the item, he began to walk through exit of the PX." Tr. 33-34. Ehrlich cited that he did not know if Employee actually paid for the black Beats headphones. Tr. 34. He affirmed that the personal property inventory listed for Employee included black beats headphones. Tr. 34.

Employee's Case in Chief

Master Sergeant Rhode Jadotte ("Jadotte") Tr. Pp. 36 – 43

Jadotte testified that he has been a member of the U.S. Air Force National Guard for approximately 16 years. Tr. 37. He cited that he and Employee enlisted together with the New York National Guard around 2017 and that they worked together in the Air National Guard. Tr. 37. Jadotte described several different assignments and deployments that he and Employee did together. He noted that he never had any issues with Employee, and that he “does what he’s supposed to do.” Tr. 37-39. Jadotte further testified that he was aware of the disciplinary charges but stands by his testimony about Employee. He reiterated that Employee is a hard worker, resilient and that he would “go to war with [Employee] any day.” Tr. 40. On cross-examination Jadotte testified that his civilian occupation is with the West Virginia State Police. Tr. 41. He noted that in his experience with the West Virginia State Police it is not appropriate to steal. Tr. 41. Members of the Panel inquired with Jadotte about if a member in the West Virginia State Police faced similar charges as Employee, if that would “sway [his] judgment or trust.” Tr. 42. Jadotte answered that there might be, however there are those who have retained employment after counseling and guidance etc. Tr. 42. He cited that he believed if Employee was given a second chance, he would be “squared away again.” Tr. 43.

Master Sergeant Joel Rodriguez (“Rodriguez”) Tr. 45 – 51

Rodriguez testified that he has been a member of the Air National Guard for 12 years. He stated that he has known Employee for a little over six (6) years through “multiple TDYs and missions.” Tr. 47. Rodriguez testified that he didn’t have any issues with Employee and that he overall “embodied the Air Force qualities and values at the time.” Tr. 47. He affirmed that Employee’s background with the police department was helpful in his Air Force duties. Tr. 47. Rodriguez cited that Employee was helpful in training the other security force members in their unit. He also noted that Employee had a good work ethic. Tr. 48. Rodriguez testified that he was aware that this was a disciplinary proceeding wherein Employee had been charged for stealing headphones. Tr. 49. Rodriguez cited that he cannot speak for Employee’s actions regarding the headphones but iterated that his interactions with Employee made him believe that Employee was a hardworking individual and upheld his values. Rodriguez cited that he does not condone stealing, but cited that Employee was reprimanded and lost rank, so he was disciplined. Tr. 50. He stated that Employee had a “good heart and was a good person overall.” Tr. 50. On cross-examination, Rodriguez testified that his civilian career is an engineer. Tr. 51.

Sergeant Noe Tattegrain (“Tattegrain”). Tr. Pp. 53 – 59

Tattegrain testified that he was employed with the Air National Guard and worked with Employee. Tr. 53-54. He stated that he has known Employee for nine (9) years and that they had multiple tours together. Tr. 54. Tattegrain further testified that his impression of Employee was that he was hardworking, always on time and always volunteering, so he was respected as an airman. Tr. 54. Tattegrain stated that his understanding of the instant disciplinary proceeding was that Employee made a mistake. Tr. 55. He said that he didn’t know why the mistake was made, but it was not normal for Employee. He testified that knowing the situation of the headphones did not change his testimony about Employee. On cross-examination, Tattegrain stated that his civilian position is a New York Police Department (“NYPD”) Officer. He noted that he did not think it was appropriate for a member of law enforcement to commit theft. Tr. 56. He reiterated that he never knew Employee to do something like that. Tr. 57. When asked by the Panel whether in his role as an officer if he would want someone like Employee, Tattegrain noted that he would “because I’ll dig deep into their history and see the reason. I believe in people getting a second chance.” Tr. 58. When the Panel asked if a plumber or

child caretaker had come into his home while he was off duty and stolen from him, if he would rehire them, Tattegrain answered “no.” Tr. 58.

Employee Tr. Pp. 61 – 93

Employee testified that after college, one of his professors encouraged him to join the military. Tr. 61-63. He enlisted and part of his training included Security Force, which is law enforcement in the military. Tr. 63. He stated that he enjoyed his work and missions and his goal was to go to officer school. He explained that after several years, one of his supervisors, who was a former NYPD officer, encouraged him to join law enforcement outside of the military. Tr. 64. He testified that he took the New York State Trooper exam and passed and was on a waiting list. He stated that another supervisor told him that D.C. was hiring, so he took the test and physical exam and passed. Tr. 65. He explained that he did not have any family in D.C., but felt it was similar to military assignments. Tr. 66. He testified that when he completed his training at the Academy, COVID hit and military service was needed. He volunteered and went back to New York. Tr. 66. He said that following each assignment he would return to MPD. Tr. 67.

Employee identified exhibits that reflected his service commendations and related awards he received while with the Air National Guard. Tr. 68. He testified that in August of 2023, he was deployed to the Air Force Academy in Colorado. He explained that he was an augmentee because they were short on “manpower.” Employee further testified that the night before the September 16, 2023, incident, he had worked long hours and did not receive a lot of sleep. He said he felt lightheaded and had a headache and notified supervisors that he needed assistance. He said that around 9am on September 16, 2023, he vomited. He explained that it was the weekend, so the medical was closed, so he drove to Fort Carson for a military hospital. He said that while driving, he decided to stop at the PX so that he could get something to eat. He testified that that is when the incident with him putting the headphones in his pocket occurred. He cited that he “...didn’t have the intention of not paying for them. I had some issues going on, family and personal issues going on at the time, but nowhere near I had any financial issues...” Tr. 73. He reiterated that he did not have any financial issues that would “push [him] to do anything that is shameful.” Tr. 74. Employee asserted that he recalled paying for the car charger and the headphones that day. Tr. 74. He explained that he put the headphones in his pocket because he was looking for other items, but he didn’t know why he did. He stated that he didn’t “have any real [sic] reason to put those headphones in [his] pocket, not for [him] not to pay for them.” Tr. 74. He further explained that when he got to the counter to purchase, he did not realize that he had items in his pockets that he did not pay for. Tr. 74.

Employee testified that in review of the CCTV footage, when he was leaving someone approached him and identified himself as store security. He said that person told him that he had items in his pocket he didn’t pay for to which he replied “No”. Tr. 75. Employee explained that the security officer reiterated that he did, and Employee then felt the bump and realized it. He said he told the officer that he didn’t realize and that he would go back and pay for it, but the officer said that he had already crossed the liner. Tr. 75. Employee said that the Air Force gave him an “Article 15” which is an administrative decision and he was demoted one rank. He was never criminally prosecuted for this incident. Tr. 75-76. He was arrested by military police that day but was released to his supervisors. He stated that his supervisor took him to the hospital that day and also got him something to eat. Employee further explained that about a week prior, he was diagnosed with Type 1 Diabetes. He also had some issues with his parents and son. Tr. 76-77. He cited that he received assistance through the military for his health. Tr. 78-79.

Employee stated that the reason he said he had committed larceny in his IAD interview was because the CCTV video of the incident showed him leaving the store with the item in his pocket. Tr. 79. Employee also testified that he did not promptly notify MPD of the incident because he was embarrassed and ashamed of himself. Tr. 80. Employee also noted that he went to EAP counseling. Employee explained that he wants to be an officer with MPD. He said that he was working toward owning property and wanted to continue to work on his dream of becoming a detective at MPD. Tr. 82. He explained that he knows he made mistakes, but that he is willing to continue to work with counseling so that he remains an officer with MPD. Tr. 83.

On cross-examination, Employee explained that he pled guilty with explanation because he was not criminally charged nor were there any criminal charges brought against him. Tr. 85. He affirmed that he agreed to having committed larceny. Tr. 85. He also affirmed that he paid for one set of headphones that day but did not pay for two others. Employee cited that the CCTV shows he is peeling something off, but he does not recall if he was peeling off the theft protection devices on the boxes. He testified that he was touching it but did not take it off. Tr. 85. He affirmed that he was disciplined for another issue and that one of the charges was also a failure to report. Employee explained that he spoke with his union representative and his lawyer, and then MPD was made aware of the other incident. Tr. 86. Employee identified Agency Exhibit 2 as his past discipline record and that the previous incident was noted as DRD 141-23. Tr. 87. He also affirmed that the disposition date of that incident was May 4, 2023. Tr. 87.

The Panel asked Employee when he last had an alcoholic beverage before going to the PX that day. Employee stated that he did not have alcohol that day. He cited that he had taken Tylenol the day of the incident. He also affirmed that he had a previous incident that he did not inform the MPD of in a timely manner. Tr. 91. Employee also cited to the Panel that he was assigned to the Seventh District (7D) at the time of the investigation. Employee affirmed that he was disciplined by his watch commander. Employee did not know why the \$200 restitution was taken out of his retirement account or if it was common for this to occur with the Air National Guard. Tr. 93. Employee also testified that the Air National Guard demoted him because of the incident and because he had a previous incident as well. Tr. 93-95. Employee explained to the Panel that in review of the CCTV that he did not have any intention of not paying and he was not going through a financial hardship at the time. Tr. 96. Employee affirmed that his position in the military had been as staff sergeant. Employee told the Panel that in that role, he should have “sounded the alarm” on himself as he knew he was “going through some stuff.” Tr. 97. Employee iterated that he had not been involved in any other misconduct Tr. 98. The Panel again inquired about the \$200 restitution. Employee cited that he went through the administrative process with the military, but he didn’t know that the money would come out of his pay. Tr. 99.

Panel Findings

The Panel made the following findings of fact based on their review of the evidence presented at the hearing. The Panel found the following³:

1. [Employee] was appointed to the Metropolitan Police Department in 2019 and is currently assigned to the Seventh District as a patrol officer.
2. [Employee] is also a member of the New York State Air National Guard.

³ Agency Answer at Attachment 4 - Adverse Action Panel Findings of Fact and Conclusion of Law dated April 10, 2025. (July 18, 2025).

3. On August 1, 2023, [Employee] was given military orders. These orders were good through September 29, 2023, for a total of sixty calendar days. [Employee] responded to the U.S. Air Force Academy in Colorado to assist the 10th SSF with law enforcement duties.
4. On September 16, 2023, [Employee] began his tour of duty at 0430 hours. At approximately 0800 [Employee] began feeling sick and reported his illness to his command. At approximately 0900 he was sent off his post to report to medical.
5. His current assignment did not have medical open on the weekends, so [Employee] was sent to Fort Carson to seek medical attention.
6. [Employee] entered the Fort Carson PX before seeking medical attention to pick up some food and other items he needed.
7. [Employee] is on PX CCTV looking at several pairs of headphones. [Employee] is observed on CCTV placing one pair of headphones into his cargo pockets.
8. [Employee] is seen on PX CCTV looking at another pair of headphones. [Employee] is seen peeling off an inventory control sticker from the headphone box.
9. [Employee] is seen on CCTV placing that same box of headphones into his cargo pants pocket.
10. [Employee] then approached the register and purchased one pair of headphones and one car charger.
11. After making the purchase, [Employee] leaves the store with two other pairs of headphones still in his cargo pockets, unpaid for.
12. After leaving the store, [Employee] is stopped by an Exchange Safety and Security Associate who advises him that he had unpaid for items in his cargo pockets. [Employee] is then escorted to the loss prevention office.
13. While in the loss prevention office, Fort Carson Military Police were contacted, and [Employee] was placed under arrest for Larceny.
14. [Employee] was then released to his military command supervisor.
15. [Employee] failed to notify MPD of his arrest. [Employee] admitted to failing to notify MPD of his arrest stating that he did so because he was embarrassed.
16. When interviewed by MPD Agent MacDonald, [Employee] admitted to stealing the headphones.
17. MPD was made aware of [Employee's] arrest 116 days after the arrest as a result of a records check through the LInX system.
18. On January 10, 2024, after being made aware of the arrest, Agent MacDonald obtained Incident Summary Number 24000105 to conduct an investigation.
19. On April 3, 2024, Agent MacDonald submitted his Final Investigative Report with Recommendations regarding the alleged Misconduct of [Employee].

Upon consideration and evaluation of all of the testimony and factors, the Panel found Employee guilty on all three (3) charges. The Panel cited that it reviewed all of the testimony and documents and concluded that Employee “acted inappropriately when he stole headphones from the Fort Carson Post Exchange.” Further the Panel concluded that Employee “acted inappropriately by withholding his arrest from MPD and failing to follow orders and notify his command.” The Panel also noted that the “action of committing larceny and withholding the arrest information calls [Employee's] character and judgment into question and adversely affects his ability to perform the job effectively.” Following its review and consideration of the *Douglas* Factors, the Panel unanimously recommended that Employee be terminated from MPD.⁴

⁴ Recommendations for Charges were: Charge 1, Specification 1: Guilty-Tier 4- Termination; Charge 2 Specification 1: Guilty-Tier 3 (Aggravating Penalty) – 30 Day Suspension; Charge 3, Specification 1: Guilty-Tier 4- Termination.

ANALYSIS AND CONCLUSIONS⁵

This Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*.⁶ According to the *Pinkard* decision, OEA has a limited role where a departmental hearing has been held. The D.C. Court of Appeals held that while OEA generally has jurisdiction over employee appeals from a final agency decision involving adverse actions under the CMPA⁷, in a matter where a departmental hearing has been held:

“OEA may not substitute its judgement for that of an agency. Its review of the agency decision...is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency's credibility determinations.”

Further, the Court of Appeals held that OEA's power to establish its own appellate procedures is limited by the agency's collective bargaining agreements. As a result, and in accordance with *Pinkard*, an Administrative Judge of OEA may not conduct a de novo hearing in an appeal before them, but rather, must base their decision on the record when all of the following conditions are met:

1. The appellant (employee) is an employee of the Metropolitan Police Department or the D.C. Fire and Emergency Medical Services Department;
2. The employee has been subject to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard* i.e. “[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing has been held, any further appeal shall be based solely on the record established in the Department hearing”; and
5. At the agency level, employee appeared before a panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action of the deciding official that resulted in an adverse action being taken against employee.

In this case, Employee is a member of the D.C. Metropolitan Police Department (“MPD”) and was the subject of an adverse action; MPD's collective bargaining agreement contains language similar to that found in *Pinkard*; and Employee appeared before an Adverse Action Panel, which held a hearing. Based on the documents of record, and the position of the parties as stated during the Prehearing Conference held in this matter and in the briefs submitted herein, the undersigned finds that all of the aforementioned criteria are met in this instant appeal. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgment for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of whether the Adverse Action Panel's findings were supported by substantial evidence, whether there was harmful error, and whether the action taken was done in accordance with applicable laws or regulations.

⁵ 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”).

⁶ 801 A.2d 86 (D.C. 2002).

⁷ See D.C. Code §§ 1-606.02 (a)(2), 1-606.03(a)(c); 1-606.04 (2001).

Whether Adverse Action Panel's Decision was supported by Substantial Evidence

Pursuant to *Pinkard*, the undersigned must determine whether the Adverse Action Panel's ("Panel") findings were supported by substantial evidence.⁸ "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁹ If the [Adverse Action Panel] findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record¹⁰ to support findings to the contrary.¹¹

Employee avers that the Agency's action of terminating him from service for Charge 1, Specification 1 is not supported by substantial evidence.¹² Employee contends that the facts and circumstances around this charge do not support a termination. Employee asserts that he "testified that he did not realize that he still had additional headphones in his pocket when he proceeded toward the exit of the PX, and he offered to pay for them after the security guard stopped him."¹³ Employee further asserts that this incident was "thoroughly investigated by the U.S. Air National Guard" and that they ultimately chose not to "charge or prosecute [Employee] for any crimes."¹⁴ Employee also adds that the U.S. Air National Guard did not terminate him for this incident and the only penalty received was a "demotion of one rank."¹⁵ Employee avers that he was never indicted or convicted of any crimes, and as such "MPD's guilty findings for Charge No. 1, Specification No. 1 for "engaging in conduct that constitutes a crime" are not supported by the evidence."¹⁶ Similarly, Employee avers that there is not substantial evidence to support termination for Charge No. 3, Specification 1. Employee asserts that the testimonial evidence reflects that his "conduct in this matter stemmed from a serious emotional distress and deep personal shame rather than an act of willful misconduct." Employee further maintains that he has consistently demonstrated a "proactive commitment to personal accountability and recovery." As such, Employee maintains that termination was not supported by the evidence.¹⁷

Agency avers that there was substantial evidence to support the charges and termination. Agency contends that "there is substantial evidence in support of each of the charges levied against Employee..[v]ideo evidence showed theft, and Employee admitted to theft."¹⁸ Further, Agency argues that "separate from the video evidence presented before the Adverse Action Panel (Panel) show his theft of two sets of headphones, Employee pled guilty or admitted to the underlying conduct."¹⁹ Agency avers that "Employee's admission alone meets Agency's burden that its decision that Employee engaged in conduct which constitutes a crime was sufficiently supported."²⁰ Agency asserts that Employee now "appears to challenge MPD's findings by claiming (1) that he lacked the requisite intent to commit larceny and (2) he was not criminally charged with a crime." Agency contends that these claims are without merit. Agency further argues that Employee's testimony that "he didn't realize" that he had two sets of headphones in his pockets are self-serving.²¹ That noted, Agency also asserts that

⁸ *Elton Pinkard v. DC Metropolitan Police Department*, 801 A.2d at page 91. (2002).

⁹ *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 at 985 (D.C. 2002).

¹⁰ Employee's Brief at Page 19 (December 27, 2022).

¹¹ *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1189 (D.C. 1989).

¹² Employee's Brief at Page 4 (November 13, 2025).

¹³ *Id.*

¹⁴ *Id.* at page 5.

¹⁵ *Id.*

¹⁶ *Id.* at Page 6.

¹⁷ *Id.* at Page 7.

¹⁸ Agency's Brief at Page 4 (October 10, 2025).

¹⁹ Agency Sur-Reply Brief at Page 1 (December 4, 2025).

²⁰ *Id.* at Page 1-2. Citing to *Employee v Metro. Police Dept*, OEA Matter No. 1601-0072-22R23, *Opinion and Order on Remand* (September 18, 2025).

²¹ *Id.* at Page 2.

the Adverse Action Panel concluded that Employee had the intent to steal as he is seen on the “CCTV removing the theft protection device before placing the property in [his] pocket.” Further, the Panel determined that Employee purchased one set but then proceeded through “all points of sale leaving the store, only stopping when an Exchange Safety and Security Associate stopped [him].”²² Agency also contends that the charge of “engaging in conduct which constitutes a crime does not require a criminal case being prosecuted...[t]he charge merely requires that an employee engage in *conduct* that constitutes a crime.”²³ (Emphasis in original). Agency also avers that General Order 120.21’s “definition of cause includes any act or omission, whether occurring on or off duty, which constitutes a crime, *whether or not such act or omission results in a conviction.*”²⁴ (Emphasis in original). To this end, Agency asserts that “the military’s decision to handle Employee’s theft administratively rather than through the criminal process has no bearing on whether Employee engaged in conduct that constitutes a crime.”²⁵

After reviewing the record, and the arguments presented by the parties in their briefs submitted before this Office, the undersigned finds that the Adverse Action Panel met its burden of substantial evidence. The parties had an opportunity to present testimonial and documentary evidence and had the ability to call witnesses and to cross-examine witnesses during the Panel hearing. Employee had the opportunity to call any witnesses and was represented by counsel who cross-examined Agency’s witnesses. Further, a review of the transcript indicated that the Panel was engaged in the hearing, asked relevant questions and made credibility determinations for the witnesses, supported by sufficient evidence in making those determinations. Further, the Panel’s findings and determinations reflect due consideration of all testimonial, video and documentary evidence presented in the record. There was no evidence in the record to suggest that the Panel’s findings were unfounded, nor were they arbitrary or capricious. This noted, I find that Employee’s assertions regarding a lack of substantial evidence for Charge 1, Specification 1; and Charge 3, Specification 1, to be unsupported by the record. The undersigned reviewed the CCTV footage that was reviewed and considered by the Panel in making its determinations. The footage shows Employee’s actions of putting the headphones in his pockets and exhibit actions that support the Panel’s findings regarding the tampering with the theft protection devices. Further, Employee’s claims that the U.S. Air National Guard did not charge him criminally nor did they terminate him from service do not stand to undermine the Panel’s findings as it relates to the instant matter. While it is unfortunate that Employee was facing emotional distress and personal issues at the time of the incident, it does not stand to challenge the substantiality of the evidence related to the charges.

Accordingly, I find the Panel’s factual findings to be consistent with the testimony provided during the Adverse Action Hearing. Wherefore, the undersigned finds that Employee’s claims that Agency lacked substantial evidence to be unsupported by the record presented. For the reasons as previously noted, I find that Agency has met its burden for substantial evidence in the charges against Employee.

Whether there was harmful procedural error.

In accordance with *Pinkard* and OEA Rule 631.3, the undersigned is required to evaluate and make determinations as to whether there are any harmful procedural errors in the administration of the instant action. Here, Employee does not raise any issues regarding procedural errors on the part of the

²² *Id.*

²³ *Id.* at Page 2-3.

²⁴ *Id.* at Page 3.

²⁵ *Id.*

Agency.²⁶ Further, the undersigned noted in review of the transcript of the Adverse Action Panel Hearing, that Employee was represented by counsel before that tribunal. As a result, I find that there were no harmful procedural errors committed in the administration of the adverse action.

Whether Agency's action was done in accordance with applicable laws or regulations (Appropriateness of Penalty).

Employee asserts that Agency's termination action was not "legally permissible" because "MPD failed to properly analyze and weigh the *Douglas* factors."²⁷ Employee avers that in consideration of *Douglas* ²⁸, OEA "has the authority to modify or reduce agency-imposed penalties when a penalty is found to be unreasonable."²⁹ Employee argues that in review of the *Douglas* factors in this matter that the Agency engaged in an analysis process wherein MPD's considerations, (in the Notice, Panel Findings, and Chief of Police) exhibit a "mechanical evaluation based on preordained formula."³⁰ Employee asserts that this failure justifies a reversal of the termination action. Employee asserts that *Douglas* Factor 1 was misapplied as aggravating and that the Panel failed to consider his testimony that "he did not realize he still had headphones in his pocket."³¹ Employee asserts that at most this should have been characterized as "neutral" as Employee was not charged with a crime and also "immediately offered to resolve the incident."³² Likewise, Employee asserts that Agency misclassified *Douglas* factor 2 as aggravating solely based on the fact that he is a police officer, without consideration that he was not in a supervisory position. Employee argues that *Douglas* Factor 4, past disciplinary history was also categorized incorrectly as aggravating, because he only had one (1) sustained misconduct in the past three (3) years and it was unrelated to the instant action.³³ Employee contends that *Douglas* factor 4 should not have been aggravating, as he presented evidence of work commendations and his past reliability.³⁴ Employee also asserts that *Douglas* factor 5 being assessed as aggravating is unsupported by the record and that Agency failed to cite to any evidence in the record

²⁶ Employee's Brief at Page 7 Part B (November 13, 2025).

²⁷ Employee's Brief at Page 7 (November 13, 2025).

²⁸ See. *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
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

²⁹ *Id.*

³⁰ *Id.* at Page 9.

³¹ *Id.* at Page 10.

³² *Id.*

³³ *Id.* at Page 11.

³⁴ *Id.* at Pages 11-15. Employee also provides reference to the character witnesses that testified at the Panel hearing.

that he “eroded the Department’s confidence in his ability to satisfactorily perform his duties and responsibilities.”³⁵

Employee also avers that in relation to *Douglas* Factor 6 that Agency failed to appropriately consider the Table of Penalties. Specifically, Employee assert that Agency classified his misconduct as a Tier 4 offense without due consideration of Tier 3 level assessment. As such, Employee asserts that Agency failed to comply with its Table of Penalties and its choice is “not supported by the evidence.”³⁶ Employee maintains that in relation to *Douglas* Factor 7, he provided comparative discipline which Agency failed to consider. Employee also asserts that Agency’s position that comparators are inapplicable because the discipline occurred under another Chief to be unsustainable in consideration of this factor. As such, Employee maintains that Agency’s failure resulted in their actions that were “outside of the tolerable limits of reasonableness by failing to adequately consider prior comparable discipline cases.” Employee asserts that Agency’s determination to make *Douglas* Factor 8 – notoriety, as aggravating to again fail to meet the tolerable limits of reasonableness. Employee asserts that the Panel determined that he had the “potential to harm the agency’s reputation” but failed to provide evidence to support actual impact on Department. Employee also contends that Agency had a duty under *Douglas* Factor 10 to consider his potential for rehabilitation. Instead, Employee avers that Agency “ignored all the evidence and found this to be an aggravating factor.”³⁷ Employee cites to his testimony about seeking counseling and services and that the Panel’s failure to consider this was an error. He also avers that his issues stemmed from “deep emotional distress,” and Agency “relied on conclusory statements without any reference to evidence” that he could be rehabilitated as a police officer.³⁸

Likewise, Employee asserts that Agency failed to give due consideration to mitigating circumstances as required by *Douglas* Factor 11 and merely determined this to be a neutral factor. Employee reiterated that he was facing emotional distress and close family members were facing challenging health diagnoses and he was also unable to see his children for an extended period.³⁹ Employee also contends that Agency abused its discretion in consideration of *Douglas* 12-the adequacy of alternative sanctions. Employee asserts that MPD “simply stated that termination is the only effective deterrent but provides no explanation of why a lesser penalty could not equally deter [Employee] or other MPD employees, from committing this kind of conduct.”⁴⁰ Employee maintains that Agency failed to administer this action in accordance with applicable laws, rules and regulations and that the termination was not an appropriate penalty in the consideration of the record.

Agency avers that its decision to terminate Employee from service was in accordance with all applicable laws, rules and regulations. Further, Agency asserts that “it is well settled that a review of an agency-imposed penalty will only be made to determine if the agency conscientiously considered all the relevant factors and exercised management discretion within the tolerable limits of reasonableness.”⁴¹ Agency contends that both the Adverse Action Panel (“Panel”) and the Chief of Police “consciously considered each of the relevant *Douglas* factors in rendering their determinations.”⁴² Agency maintains that the determinations that *Douglas* factors 1, 2, and 5 were

³⁵ *Id.* at 16.

³⁶ *Id.* at 16-15.

³⁷ *Id.* at 19.

³⁸ *Id.* at 20.

³⁹ *Id.* at 21.

⁴⁰ *Id.*

⁴¹ Agency’s Brief at Page 5 (October 10, 2025).

⁴² *Id.* at Page 6.

“aggravating because Employee’s theft was unacceptable for a member of law enforcement and thereby led Agency to question Employee’s judgment.”⁴³ Agency also cites that the Chief of Police reviewed and questioned the Panel’s determinations for *Douglas* Factors 2, 4, 5, 6, 7,8,10 and 11.⁴⁴ Ultimately, the Chief of Police “rejected Employee’s arguments and terminated Employee consistent with the Panel’s findings.” Agency rejects Employee’s claim regarding a misapplication of *Douglas* Factor 2, given that he was not in a supervisory role, and notes that “as a rule, law enforcement officer may be held to a higher standard than typical employees, thereby supporting Agency’s determination.”⁴⁵ Likewise, Agency avers that it did not misapply *Douglas* Factor 4 in consideration of Employee’s work record..⁴⁶ Agency also cites that the character witnesses presented by Employee during the Panel hearing all testified that they “did not believe it was appropriate for any law enforcement officer to commit theft like Employee committed.”

Agency also avers that Employee’s claim that *Douglas* Factor 5 was misapplied because it didn’t impact his ability to do his job is unfounded. Agency asserts that both the Panel and the Chief of Police had discretion in those determinations. Agency also rejects that Employee’s claim that the Table of Penalties was misapplied in categorizing his offenses as Tier 4. Agency contends that the Table of Penalties “clearly lists engaging in conduct which constitutes a crime as a Tier 4 offense subject to termination.” As it relates to *Douglas* Factor 7, Agency asserts that Employee’s claim that it should have been categorized as “mitigating” because they failed to consider examples of comparative discipline to be unsupported. Agency argues that “the Panel noted, the penalty proposed was consistent with that imposed on other employees and thus appropriately found the factor neutral.”⁴⁷ Agency maintains that it appropriately considered *Douglas* Factor 8 in categorizing it as aggravating and disagrees with Employee’s claim that his “arrest by the military lacks sufficient notoriety” to support that categorization. Agency asserts that even though Employee’s misconduct was not “public,” “disciplinary proceedings are not a secret.”⁴⁸ Regarding *Douglas* Factor 10, Agency cites that while it “commends Employee for seeking treatment, *Douglas* factor 10 requires MPD to consider an employee’s potential for rehabilitation as a police officer, not his own efforts at self-improvement.” Similarly, Agency asserts that its determinations for *Douglas* Factor 11 were based on substantial evidence and it heard and considered the testimony regarding Employee’s personal and familial challenges.⁴⁹

Agency also contends in relation to Employee’s arguments around *Douglas* Factor 3 that Employee provides “no authority that an employee’s past discipline must be related to his current misconduct.”⁵⁰ Agency cites that such a claim “defies logic.” Further, Agency argues that there is no authority which requires it to articulate “why it considered its charge of conduct unbecoming a tier 4 offense rather than a tier 3 offense.”⁵¹ Agency maintains that as it relates to Employee’s claims regarding *Douglas* factor 12 that it “only needs to show that a penalty is reasonable, not that a lesser

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at Page 7.

⁴⁸ *Id.* at Pag 8.

⁴⁹ *Id.* at Page 9.

⁵⁰ Agency Sur-Reply at Page 4-5 (December 4, 2025).

⁵¹ *Id.*

penalty could not suffice.”⁵² As such Agency asserts that its action was administered in accordance with all applicable laws, rules and regulations and the termination action should be sustained.

In determining the appropriateness of an agency’s penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).⁵³ Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that “managerial discretion has been legitimately invoked and properly exercise.” Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.⁵⁴ Accordingly, when an Agency charge is upheld, this Office will “leave Agency’s penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement.”⁵⁵ In the instant matter, I find that Agency followed all appropriate laws, rules and regulations in its administration of the instant action. Further, I find that Employee’s claims regarding the *Douglas* Factors reflect a disagreement with the Agency’s determinations in this matter, and the record does not support a finding that the Agency’s actions were otherwise arbitrary or capricious. Additionally, I find that the record is clear that the Panel and the Chief of Police gave due consideration and review to the *Douglas* factors in making its determinations and findings; and in ultimately sustaining the charges. Accordingly, for the aforementioned reasons, I find that Agency’s action of terminating Employee from service should be upheld.

ORDER

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

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge

⁵² *Id.* at Page 5.

⁵³ See also. *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

⁵⁴ *Love* also provided the following:

[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

⁵⁵ *Id.* See also. *Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.