THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0042-25
	)	
v.	)	Date of Issuance: November 26, 2025
	)	
METROPOLITAN POLICE DEPARTMENT,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

Daniel McCartin, Esq., Employee's Representative
Connor Finch, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 28, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the Metropolitan Police Department's ("Agency" or "MPD") decision to terminate him from his position as a Police Officer, effective May 1, 2025. Employee was terminated for two (2) separate incidents. Under the first incident **(DRD # 073-24)** which occurred on October 8, 2023, Employee was charged with violating (1) General Order ("GO") Series 120.21, Attachment A, 6; (2) G.O. Series 120.21, Attachment A, 1; and (3) G.O. Series 120.21, Attachment A, 11; (4) G.O. Series 120.21, Attachment A, 24. For the second incident **(DRD # 518-24)** that occurred on November 25, 2023, Employee was charged with violating: (1) G.O. Series 120.21, Attachment A, 6; (2) G.O. Series 120.21, Attachment A, Part A-7; (3) G.O. Series 120.21, Attachment A, 1; (4) G.O. Series 120.21, Attachment A, 11; and (5) G.O. Series 120.21, Attachment A, 24. OEA issued a Request for Agency Answer to Petition for Appeal on May 29, 2025. Thereafter, Agency submitted its Answer to Employee's Petition for Appeal on June 24, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on June 24, 2025.

Upon review of the case file, the undersigned determined that this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department,* 801 A.2d

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

86 (D.C. 2002).[2] Consequently, on July 1, 2025, the undersigned issued an Order requiring the parties to submit written briefs addressing the following: (1) whether Agency's decision to take adverse action against Employee was supported by substantial evidence; (2) whether there was harmful procedural error with the Trial Board's decision; and (3) whether Agency's action was done in accordance with all applicable laws and regulations. Agency's brief was due by July 22, 2025; Employee's brief was due by August 12, 2025; and Agency had the option to file a sur-reply by August 16, 2025. Both parties have submitted their respective briefs. 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 the Trial Board's decision was supported by substantial evidence.

2) Whether there was harmful procedural error.

3) Whether Agency's action was done in accordance with 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.[3]

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[2] Pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, 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 & Emergency Medical Services Department; (2) The employee has been subjected to an adverse action; (3) The employee is a member of a bargaining unit covered by a collective bargaining agreement; (4) The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; and (5) At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee.

[3] OEA Rule § 699.1.

STATEMENT OF THE CHARGE(S)

According to Agency's Answer to Employee's Petition for Appeal, Employee's adverse action was predicated on the following charges and specifications, which are reprinted in pertinent part below:

DRD # 073-24

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

Specification No. 1: In that, during your IAD interview you admitted that you drove your personal vehicle to work while you were under the influence of alcohol in violation of D.C. Code 50-2206.11 - Driving Under the Influence (DUI) of alcohol or a drug. Your Preliminary Breath Test (PBT) result of 0.13 BAC was over the D.C. legal limit of 0.08 BAC.

Charge No. 2: Violation of General Order Series 120.21, Attachment A, 1, which prohibits, "*Alcohol: Off-duty – drinking while in uniform and/or under the influence.*"

Specification No. 1: In that, on October 8, 2023, you were observed by several officials at the Fifth District Station to display signs consistent with alcohol impairment, and you admitted to the officials that you consumed alcohol prior to responding to work. You submitted to a Preliminary Breath Test (PBT) and recorded a 0.13g/210L on the United States Park Police (USPP) instrument. In your subsequent IAD interview, you admitted that you consumed several alcoholic beverages within two (2) hours of your reporting for your tour of duty, and that you were impaired when you drove to and arrived at work.

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

Specification No. 1: In that, on October 8, 2023, you admitted that you consumed alcohol within two hours of your tour of duty and drove to work under the influence of alcohol, thereby potentially endangering yourself and the citizens of the District of Columbia. Therefore, your conduct brough discredit to yourself and to the reputation of the department.

Charge No. 4: Violation of General Order Series 120.21, Attachment A, 24, which states: "*Any conduct not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving failure to*

obey, or properly observe any of the rules, regulations and orders relating to the discipline and performance of the force."

Specification No. 1: In that, on October 8, 2023, you consumed alcohol within two hours of your tour of duty, and you drove to work while under the influence of alcohol. Your actions were reckless and irresponsible, and potentially endangered not only yourself, but also the community. Additionally, members of the United States Park Police were made aware of your misconduct. Therefore, your actions have the potential to tarnish the image and legacy of the agency in the eyes of the public that we are entrusted to serve.

DRD #518-24

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

Specification No. 1: In that, on November 29, 2023, a Maryland criminal summons was issued to you, charging you with Reckless Endangerment, MD Criminal Code 3-204(a) (1), Loaded Handgun in Vehicle, MD Criminal Code 4-203(a)(1)(v), and Loaded Handgun on Person, MD Criminal Code 4-203(a)(1)(v).

Specification No. **2**: In that, on November 29, 2023, you were issued a traffic citation for Driving, Attempting to Drive a Vehicle While Under the Influence of Alcohol, MD Criminal Code 21-902 (A1) (i) and for Driving, Attempting to Drive a Vehicle While Impaired by Alcohol, MD Code 21-902 (B1) (I).

Specification No. **3**: In that, on December 1, 2023, you were served with a criminal summons D-042-CR-23-002399 by the District Court of Charles County, Maryland.

Specification No. **4**: In that, on January 26, 2024, you were criminally indicted and charged in the State of Maryland with Assault – First Degree, MD Criminal Code 3-202, Use of a Firearm in a Violent Crime MD Criminal Code 4-204 (b), three (3) counts of Reckless Endangerment, MD Criminal Code 3-204(a) (1), Loaded Handgun in Vehicle, MD Criminal Code 4-203(a)(1)(v), and Loaded Handgun on Person, MD Criminal Code 4-203(a)(1)(v), Driving, Attempting to Drive a Vehicle While Under the Influence of Alcohol, MD Criminal Code 21-902 (A1) (i) and for Driving, Attempting to Drive a Vehicle While Impaired by Alcohol, MD Code 21-902 (B1) (I).

Specification No. 5: In that, on June 18, 2024, you pleaded guilty to one (1) count of Reckless Endangerment, Loaded Handgun on a Person, and Driving a Vehicle While Under the Influence of Alcohol.

Charge No. 2: Violation of General Order Series 120.21, Attachment A, 7, which states, "*Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or*

the neglect of duty. Three sustained adverse actions within a 12-month period upon charges involving misconduct, as provided in this section, shall be prima facie evidence of inefficiency. The adverse action charges need not be related."

Specification No. 1: In that, following a review of your work history, it was revealed that you have two (2) prior sustained adverse actions within the past 12-month period; specifically, IS-23-002254 was sustained on October 12, 2023, and IS-23-003805 was sustained on January 23, 2024.

Charge No. 3: Violation of General Order Series 120.21, Attachment A, 1, which prohibits, "*Alcohol: Off-duty – drinking while in uniform and/or under the influence.*"

Specification No. 1: In that, on November 25, 2023, while off-duty and in non-contact status, you consumed alcohol to the point of intoxication. Your intoxication was, by your own admission, the primary factor in the negligent discharge of your personally owned pistol inside the Waldorf Liquor Store.

Charge No. 4: Violation of General Order 120.21, Attachment A, 11, which states, "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violation of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*"

Specification No. 1: In that, on November 25, 2023, while off-duty and in a non-contact status, you met with off-duty Officer Gina Vaughn and her cousin, Mr. Vaughn, at the Rock and Toss restaurant in Waldorf, Marland, where you consumed alcohol to the point of intoxication. After leaving the restaurant, you, Officer Vaughn and Mr. Vaughn proceeded to the Waldorf Liquor store, where you negligently discharged your personally owned pistol that you unlawfully concealed in your pants pocket, causing non-life-threatening injury to Mr. Vaughn and damage to Officer Vaughn's jacket and the store's floor. You then fled the scene in your vehicle, which you drove despite your heavy intoxication. The Charles County Sheriff's Deputies later apprehended you and subsequently charged you with several criminal offenses, including felonies. Your misconduct was egregious and unacceptable, and adversely affected the department.

Charge No. 5: Violation of General Order 120.21, Attachment A, 24, which states, "*Any conduct, not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observing any of the rules, regulations, and orders relating to the discipline and performance of the force.*"

Specification No. 1: In that, on November 25, 2023, while off duty and in a non-contact status, and while unlawfully carrying your personally owned firearm, you consumed excessive amounts of alcohol to the point of intoxication. While intoxicated, you negligently discharged your pistol, which was insecurely concealed on your person, causing injury to Mr. Vaughn and property damage to Officer Vaughn's jacket and to floor of the establishment. You then fled the scene in your vehicle and were later apprehended by the Charles County Sheriff's Office. You were subsequently charged with several criminal offenses, including felonies, and later pleaded guilty to one (1) count of Reckless Endangerment, Loaded Handgun on a Person, and Driving a Vehicle While Under the Influence of Alcohol. Your misconduct took place in public and was witnessed by the members of the public and investigated by an outside agency, causing embarrassment and discredit to the department, and irreparable damage to your reputation.

On February 14, 2025, Employee appeared before a Fire Trial Board. He was represented by counsel and pleaded to these charges as follows:

DRD # 073-24:

1) Charge No.1: Specification No. 1: Not Guilty
2) Charge No. 2: Specification No. 1: Not Guilty
3) Charge No. 3: Specification No. 1: Guilty
4) Charge No. 4: Specification No. 1: Guilty

DRD #518-24

1) Charge No.1: Specification No. 1: Guilty
2) Charge No. 1: Specification No. 2: Guilty
3) Charge No. 1: Specification No. 3: Guilty
4) Charge No. 1: Specification No. 4: Guilty
5) Charge No. 1: Specification No. 5: Guilty
6) Charge No. 2: Specification No. 1: Not Guilty.
7) Charge No. 3: Specification No. 1: Guilty
8) Charge No. 4: Specification No. 1: Guilty
9) Charge No. 5: Specification No. 1: Not Guilty

SUMMARY OF THE TESTIMONY[4]

On February 14, 2025, Agency held a Trial Board 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 part of the Trial Board Hearing.

[4] Agency's Answer to the Petition at TAB 7 (June 24, 2025).

Agency's Case-in-Chief

1) Harrison Grubbs ("Agent Grubbs") – Tr. pgs. 22-66

Agent Grubbs is employed by Agency, and he has been assigned to Agency's Internal Affairs Division ("IAD") since September of 2023. In his role as an IAD Agent, he investigates misconduct, on duty and off duty, as well as excessive use of force. Agent Grubbs cited that he was assigned to investigate a matter concerning Employee. He also stated that he knew Employee prior to the investigation from his assignment to the Fifth District ("5D") as a patrol officer where Employee was assigned. He affirmed that he prepared an Investigative Report following his investigation into Employee's matter. Tr. pgs. 22-23.

Agent Grubbs identified Agency's Exhibit 2 as the Final Investigative Report he drafted concerning the allegation of misconduct against Employee, bearing IAS numbers 23004469. Referencing Attachment 1, page 47 of this exhibit, Agent Grubbs testified that "this is a PD-77 revocation and restoration of police powers and notice of duty and pay status for [Employee]." He noted that he was not the author of this document and that it was revoked prior to his investigation. Referring to Attachment 2, page 52 of the same exhibit, Agent Grubbs identified this document as "a Charles County Sheriff's Office Offense Incident Report." He cited that the document was provided to him by Detective Hakim Burgess ("Detective Burgess") who works for the Charles County Sheriff's Office. He affirmed that Detective Burgess was the detective who investigated from Charles County. Agent Grubbs asserted that he reached out to Detective Burgess to get the report or any other information or reports that he had pertaining to the incident involving Employee. Tr. pgs. 24 – 26.

Agent Grubbs identified Attachment 3, page 58 of Agency's Exhibit 2 as another PD-77 "Revocation and Restoration of Police Powers and Notice of Duty and Pay Status form" which was completed on November 25, 2023. He identified Attachment 4 of the same exhibit as incident summary sheet for IS Number 23004469. Agent Grubbs cited that the Department uses these incident summary sheets to initiate administrative investigations. Agent Grubbs identified Agency's Exhibit 2, Attachment 5 as a PD-9018 which is a "preliminary report form for misconduct and duty status and other unusual incidents." Agent Grubbs identified Attachment 6, page 94 as an application for a search and seizure warrant that Detective Burgess authored and presented to him. He also identified Attachment 7, page as another Charles County Sheriff's Office incident report labeled 'supplement report' which was provided to him. Tr. pgs. 27 – 30.

Agent Grubbs affirmed that he conducted an interview during the course of his investigation. He testified that he interviewed Officer Gina Vaughn ("Ofc. Vaughn") of 5D, Detective Burgess, two (2) employees of Waldorf Liquors and Employee. Tr. pgs. 30 -

Agent Grubbs identified Attachment 12, page 127 of Agency's Exhibit 2 as an email correspondence he had with someone from the Maryland State Police about requesting confirmation if Employee had a conceal carry permit in the State of Maryland. He noted that after a comprehensive search, it was determined that Employee did not have a conceal carry permit in Maryland. Agent Grubbs identified Attachment 12, page 130 as an email he sent to Mr. Vaughn, who was a witness to the incident involving Employee. He stated that he reached out to Mr.

Vaughn to attempt to interview him, but he was not unable to interview him. Agent Grubbs identified Attachment 16, page 134, as an email he sent to Ms. Murielle Jean-Pierre, a witness to an incident involving Employee, in an attempt to interview her. He stated that he could not interview Ms. Murielle Jean-Pierre. Tr. pgs. 31 – 33.

Agent Grubbs identified Attachment 1, page 136 of Agency's Exhibit 2, as a PD-854 that he completed of an interview synopsis of a Mr. Prakash Patel. He testified that a PD-854 was a report used to document their investigative steps or measures that they take. He asserted that Mr. Patel was a witness because he was employed at Waldorf Liquor, and he was present during the incident where Employee discharged a firearm in his pocket inside of the store. Agent Grubbs identified Attachment 17, page 138 as a PD-854 that he completed of an interview synopsis of a Mr. Rasidra Sharma. He stated that Mr. Sharma was employed by the liquor store and he was a witness to the incident involving Employee. He noted that he got the names of the witnesses from the Charles County Sheriff's Office report generated during their criminal investigation. Agent Grubbs identified Attachment 18, page 140 as a PD-854 that he completed of a synopsis statement from Detective Burgess. He cited that Detective Burgess was a lead criminal investigator for the incident that took place at Waldorf Liquor. He stated that he interviewed him over the phone. Agent Grubbs identified Attachment 19, page 147, as a PD-854 that he completed, of a synopsis statement from Ofc. Vaughn of the Fifth District. He testified that Ofc. Vaughn was a witness since she was present at Waldorf Liquor at the time of the incident. Agent Grubbs identified Attachment 20, page 154, as a supplemental statement synopsis from Ofc. Vaughn. He explained that he had follow-up questions from her first statement and this interview was conducted after he interviewed Employee. Agent Grubbs identified Attachment 21, page 156 as a PD-854 that he completed for Employee. Agent Grubbs confirmed that all the interviews were recorded. Tr. pgs. 33 – 39.

Agent Grubbs testified that he reviewed two (2) videos in the course of his investigation – the CCTV video from Waldorf Liquor and the interview of Employee by Detective Burgess. He identified Agency's Exhibit 9 as the video recordings he reviewed. Agent Grubbs described the numbers found on the left-hand column on page 22 of his report as "… the minute markers that are part of the played video so that would be the time that each incident that I document on the right occurred." He affirmed that this was the time from the beginning of the video to the end of the video. He also affirmed that he was able to identify some of the people in the video. Tr. pgs. 40-43, 48.

Grubb testified that Employee's personal firearm which was in his front right-hand pocket discharged while in the liquor store. He cited that Employee stated during his interview that when he left the liquor store, he went to Ofc. Vaughn's house, and then "he went back to the restaurant that they were at as a group before … After there, he was on his way back to Waldorf Liquor, where he was stopped by the Charles County Police … Sheriff's Office." Agent Grubbs asserted that Employee drove his car to these places. He stated that Employee did not drive to the liquor store. Agent Grubbs testified that Employee drove to the restaurant, but he was unsure if Employee had consumed alcohol prior to driving to the restaurant. He was also unsure if Employee brought his firearm into the restaurant. Agent Grubbs also stated that Employee said he consumed alcohol at the restaurant. Tr. pgs. 43-48. He highlighted that he attended a couple of Employee's criminal hearings.

Referring to page 20-33 of his report, Agent Grubbs confirmed that he sustained allegations of misconduct as a part of his investigation. He explained that he sustained the allegations relating to 'off duty drinking while in law uniform' based on his finding that Employee consumed alcohol to the point of intoxication while off-duty and his alcohol consumption was a primary factor in the discharge of Employee's personal firearm. Agent Grubbs confirmed that he also sustained this allegation based on Employee's own admission that he drank alcohol and because Employee admitted multiple times during their interview that he did not have an explanation for his actions besides the fact that he was intoxicated. Agent Grubbs testified that when he interviewed Employee, he stated that he did not know why he brought his personal firearm into the liquor store and Employee did not provide a reason why his firearm went off inside the liquor store. Tr. pgs. 49- 51.

Agent Grubbs asserted that he sustained the allegation relating to the violation of General Order 121, Part 4(a)(6) – engaging in conduct constituting a crime because a criminal summons was issued for Employee, charging him with reckless endangerment, two counts of reckless endangerment, loaded handgun in a vehicle, as well as loaded handgun on a person under Maryland Criminal Code. Agent Grubbs explained that he also relied on two (2) traffic citations that Employee received for attempting to drive a vehicle under the influence of alcohol as well as attempting to drive a vehicle while impaired by alcohol. He also cited that he relied on Employee's criminal indictment as well. Tr. pgs. 51 – 52.

Regarding the charge of inefficiency, Agent Grubbs testified that Employee "… was cited and sustained with adverse action on October 12, 2023 relating to IS 2300254. This is where he engaged in a vehicle pursuit that violated MPD policy, as well as made untruthful statements. And then on January 23, 2024, he received sustained adverse action relating to IS 230023805 where he reported to work under the influence of alcohol." Agent Grubbs stated that he had no role in these two (2) prior misconducts. He cited that those were the findings of two (2) separate investigations conducted by the Internal Affairs Division. Tr pgs. 53-54. Agent Grubbs highlighted that he did not know if any discipline was imposed against Employee in the vehicle pursuit and violation of MPD policy allegation. Tr. pgs. 62.

For the charge of conduct unbecoming of an officer, Agent Grubbs asserted that he sustained this charge because Employee's "… acts were detrimental to good discipline by drinking to the point of intoxication and then arming himself with a firearm and then bringing it inside a liquor [store] and then negligently discharging that firearm." Tr. pgs. 54-55.

Referring to page 9 of his report, Agent Grubbs confirmed that he was told by Detective Burgess that based on his experience, Employee was extremely intoxicated on the night of the incident, he did not resist, he was cooperative, he was not argumentative during this interactions with Detective Burgess or Charles County, and he complied with the demands of Charles County police officers. Agent Grubbs also affirmed that Employee provided a voluntary statement to Charles County after being read his Miranda rights. Agent Grubbs affirmed that he interviewed Ofc. Vaughn and that Ofc. Vaughn reported that the day after the incident, she went to MPEAP with Employee, and she dropped Employee with Dr. Beverly Anderson at EAP. Agent Grubbs confirmed that Ofc. Vaughn stated that she was friends with Employee and that she observed that Employee was going through a lot of issues during that period. Agent Grubbs affirmed that

Employee stated that the discharge of his firearm was unintentional. He cited that based on his investigation, it was a negligent discharge. Agent Grubbs confirmed that Employee apologized to him and to the Department for what had happened, and Employee stated that this would not have happened had he not been intoxicated. Agent Grubbs testified that Employee stated during the interview that he was going through personal issues and consuming alcohol became a problem for him. Agent Grubbs cited that he believed Employee when he apologized. Tr. pgs. 55- 61.

2) Hakim Burgess ("Detective Burgess") – Tr. pgs. 67-86

Detective Burgess has been employed with the Charles County Sheriff's Office for about eleven (11) years. He is currently a homicide detective, and he has been in this role for approximately one (1) year. Prior to this, he was a Special Victim's Unit detective. He recalled a criminal investigation involving Employee as the suspect and he cited that he was the lead investigator. Detective Burgess noted that he did not know Employee prior to the investigation. Tr. pgs. 67-68.

Detective Burgess recounted that he was working an overtime assignment as a patrol officer on the day of the incident. He stated that he was on Crain Highway and Waldorf when they received a call for shots fired and a person struck. Detective Burgess asserted that he was the closest unit, so he responded to the area, which was at Waldorf Liquors, on the opposite side of Crain Highway and also in Waldorf. He explained that when he responded to the scene, he made contact with Daryl Vaughn ("Mr. Vaughn") in the parking lot between Waldorf Liquors store and a carry out restaurant who informed him they were struck by a bullet. Detective Burgess testified that the injured person advised him that a person he was with fired his gun and he was struck in the leg and had very superficial injuries. He stated that he also made contact with a female, Ofc. Vaughn, who was present at the scene, and Ofc. Vaughn provided the name of the person who fired the weapon and fled the scene. Detective Burgess stated that this initiated the investigation. He noted that Ofc. Vaughn informed him that she was an MPD officer Detective Burgess cited that he arrived at the scene approximately 45 seconds from when they got the dispatch call. He stated that the incident was reported through a 9-1-1 call, but he did not know who made the 9-1-1 call. Detective Burgess testified that he saw Mr. Vaughn's injury and he described it "as an abrasion, no -- the skin wasn't really broken, it was just a red area on his leg." Detective Burgess asserted that he briefly interviewed Mr. Vaughn and Ofc. Vaughn separately. Tr. pgs. 68 – 73.

Detective Burgess identified page 52 of Agency's Exhibit 2 as the initial incident report he authored and signed on November 25, 2023, and which was approved by his supervisor, Sergeant Webster on December 8, 2023. Detective Burgess asserted that after he took the initial statements from Mr. Vaughn and Ofc. Vaughn, he started his investigation. He testified that he made contact with the store owners inside the store, and the officers at the scene. He explained that at some point Ofc. Vaughn informed him that Employee had called her again to inform her that he was back at a restaurant that they were originally at before they came to the liquor store. Detective Burgess testified that once they got Employee's vehicle description, they immediately dispatched officers to the area of the restaurant, which was in Waldorf. He stated that Employee was driving his vehicle when he was located and they conducted a felony traffic stop, arrested Employee and transported him to their Criminal Investigations Division. Detective Burgess stated that Employee's vehicle was towed to their crime lab and they got a search warrant. He also stated that

Employee made a statement after his arrest which was recorded. Detective Burgess affirmed that Employee appeared intoxicated during the interview and Employee acknowledged that he had something to drink. Tr. pgs. 73 – 79.

Detective Burgess testified that during the interview, Employee said he did not know how his gun went off. He noted that Employee talked about his hand being in his pocket and that he may have been reaching for his phone, but he was unclear on how the gun actually discharged. Detective Burgess testified that Employee said he left the scene to process what had happened. Tr. pgs. 79 – 80.

Detective Burgess cited that he applied for a search and seizure warrant for Employee's vehicle which was approved. He testified that they executed the warrant at their Sheriff's Office Crime Lab in La Plata, Maryland. Detective Burgess identified page 100 of Agency's Exhibit 2 as a supplemental report completed by one of their forensic science techs, Taylor Maine. He confirmed that he was present when the search warrant was executed and that they recovered a firearm during the search. Detective Burgess explained that the firearm "… was field stripped. So, the upper slide was located on the floorboard behind the driver's seat. And then, the lower receiver was in the glove box." He stated that a firearm would have to be assembled for it to go off. Detective Burgess confirmed that the firearm was 'field stripped' after the gun went off and he asserted that Employee told him he took the firearm apart. He stated that Employee mentioned during the interview that he brought the firearm into the liquor store because he was not familiar with the area, and he did not know what the crime rate was in the area. Detective Burgess highlighted that Employee did not have a permit to have a loaded firearm in the State of Maryland Tr. pgs. 80-83.

Detective Burgess confirmed that he read Employee his Miranda rights prior to interviewing Employee and Employee voluntarily waived those rights and agreed to provide a statement. He affirmed that Employee was cooperative with his investigation, he answered all the questions he was asked, he was respectful, and he asked if anyone had been hurt in the incident. Tr. pgs. 84 – 85. When questioned by the Panel why Ofc. Vaughn was listed as a victim in the incident report, Detective Burgess stated that "So, I guess the ricochet hit her jacket, but it didn't penetrate her skin. So, that's why she's listed as a victim." Tr. pg. 86.

3) Jacqueline Lea ("Agent Lea") - Tr. pgs. 87-119

Agency Lea has been employed by Agency since March of and she is currently assigned to the Internal Affairs Division ("IAD"). She has worked with IAD since September 2023. She stated that as an agent, she gets "assigned cases of potential alleged officer misconduct to investigate and determine if that misconduct will be sustained or otherwise exonerated, et cetera." Agent Lea confirmed that she investigated a misconduct involving Employee. She noted that she did not know Employee prior to this investigation. She confirmed that she prepared an investigative report during the course of her investigation. Agent Lea identified Tab 11 as the final investigative report for the investigation into Employee which she was assigned. She affirmed that she authored the investigative report and that the report had attachments. Tr. pgs. 87 – 90.

Agency Lea identified Attachment 1 as a printout from the TMA time management system which indicated that Employee entered time for his tours of duty that he was assigned. She stated that for October 8, 2023, the document reflected that Employee entered two (2) hours of annual leave from 1400 hours to 1600 hours and that his tour would have commenced at 1600 hours and continued to 0030 hours the next day. Tr. pgs. 90-91. Agent Lea also identified what she described as "a printout of the card holder active. So, for the ID cards that everyone is assigned, when you scan in to say you're district station, on any place for the Metropolitan Police Department, you would have to use your ID card for access. It would register when you scanned the ID card and then, what entrance you scanned into." Agent Lea testified that this document demonstrated that "… the key card was used at 1704 hours. And that would be at the rear entry door to the 5th District. I believe the 5th District has a couple of different rear entry doors. I believe this is the second floor rear entry." She stated that this time was entered after Employee's tour of duty was scheduled to begin on October 8, 2023. Agent Lea explained that Employee's annual leave should have ended at 1600 hours. Tr. pgs. 90-93.

Agent Lea confirmed that she reviewed Body Worn ("BWC") camera footage during the course of her investigation. Upon reviewing Agency's Exhibit 13, Agent Lea described the run time and the actual time that the BWC records. She stated that the video "… initiated at 2132 hours and then was approximately three minutes and 20 seconds long Tr. pgs." 93-95. Agent Lea identified Attachment 5 as PD901A and B, a preliminary investigative report. She noted that she was not the author of the document, but she reviewed it. Agent Lea identified Attachment 6 as a PD854, a summary of her interview of Lieutenant Sprague ("Lt. Sprague"). She cited that her interviews were recorded. Tr. pg. 96 – 97. Agent Lea confirmed that she reviewed the recording of Agent Cobb's interview with Sergeant Goldston and Sergeant Jones. Referring to Attachment 9, Agent Lea testified that she was present during Agency Erlick's interview of Employee and that she typed up the PD854 summary of that interview. Tr. pgs. 98 – 100

Agent Lea identified Attachment 10 as the PD824 summary of her review of the surveillance cameras at the 5th District. She testified that the surveillance camera showed Employee entering through that rear door as noted her report, and that "the times on the camera were not accurate." She confirmed that Employee arrived at approximately around 1705 hours. Agent Lea testified that based on her investigation, after Employee arrived, he went to the locker room to change into his uniform and thereafter, he responded to the sergeant's office to obtain his assignment for the tour. She asserted that while speaking with Sergeant Jones in her office, Sergeant Jones detected what she believed to be an odor of alcohol consistent with liquor emanating from Employee's person. Agent Lea asked Employee a few questions and asked if he had been drinking before she contacted Lieutenant Sprague to inform him that Employee had arrived for his shift under the apparent influence of alcohol. Agent Lea states that Lieutenant Sprague had a face-to-face contact with Employee and he determined based on some physical signs that Employee was impaired by alcohol. She stated that Lieutenant Sprague notified the IAD on call agent, Agent Cobb. Tr. pgs. 100 – 104.

Agent Lea testified that after receiving the call, Agent Cobb responded to the 5th District where he met and interviewed Sergeant Jones and Lieutenant Sprague. She cited that determination was made to request for assistance from U.S. Park Police to come administer a preliminary breath test because they typically do not perform the breathalyzer for their own

members and because that agency is issued and authorized to use preliminary breath test ("PBT") instruments while MPD is not. Agent Lea asserted that the PBT showed a BAC of .13. Tr. pgs. 105 – 106.

Agent Lea affirmed that she was present during Employee's interview and that Employee stated that on October 8, 2023, at about 1200 hours, he began drinking tequila and juice. She noted that Employee stated that he drank about three (3) of those and at around 1300 hours, he called Sergeant Goldston to request leave for the first two (2) hours of his shift. Agent Lea cited that Employee stated during the interview that he drove his personal vehicle to work on October 8, 2023. She asserted that Employee cited that he believed he was still impaired at the time he drove his vehicle. Agent Lea testified that Employee stated during the interview that that he had been going through some tough personal circumstances related to his "grandmother had passed away and that had kind of kicked off some other issues with other family members. In addition, too, he was having some difficulties, I believe, like a personal romantic relationship. And that all of that had kind of caused him to turn to alcohol as a result." She cited that Employee expressed remorse about the decisions he had made. Tr. pgs. 106-109, 119. Agent Lea affirmed that Sergeant Jones conveyed to Lt. Sprague that she had spoken with Employee who stated that he had been going through some things, that he had a drinking problem, and that he needed help. Tr. pgs. 117-118.

Agent Lea affirmed that the breathalyzer test was administered by U.S. Park Police Officer, Doherty and that he was not interviewed as part of the investigation. She confirmed that it was determined during the investigation that a printout of the results of that breathalyzer test was not generated, and that Office Doherty walked over to Lt. Sprague showed him the results. Agent Lea cited that the results could not be seen on the BWC as there appeared to be glare from the lights. She could not recall if Lt. Sprague was specifically asked to recall the actual result of the PBT. She cited that the results of the PBT were also shown to Agent Cobb but not to Employee. Agent Lea noted that Agent Cobb included the results of the PBT in his preliminary report. Tr. pgs. 109-113.

Agent Lea confirmed that she stated in her investigative report that Employee was not investigated criminally for driving under the influence because he was not observed by any law enforcement officers operating a vehicle. She affirmed that the matter was never referred to the U.S. Attorney, Employee was never charged with any crime, and he was never arrested for this incident. Tr. pgs. 113-117.

4) John Sprague ("Lt. Sprague") – Tr. pgs. 121-130

Lt. Sprague is assigned to the MPD Fifth District and has been there for approximately four (4) years. He stated that he served as a full-service area lieutenant PSA 501, and his duties included the district watch commander, as assigned. Lt. Sprague testified that Employee has been an officer at the Fifth District since he's been there as a lieutenant. He noted that he was Employee's direct supervisor at least at some point in time. Tr. pgs. 121-122.

Lt. Sprague affirmed that there was a time when Employee appeared impaired on duty. He testified that while he was a Watch Commander, he received a phone notification from one of his sergeants, Sergeant Jones, that they believed a member had reported to work intoxicated. While he

could not recall what he did immediately, Lt. Sprague asserted that since he was not in the building, he directed Sergeant Jones to standby with Employee until he got back from handling a 'use of force' in the field that required an internal affairs notification. He stated that he returned within an hour and he spoke with Sergent Jones[5], and Sergeant Goldston. Lt. Sprague cited that he was told by his sergeants that Employee was in the parking lot, so he directed Sergeant Jones to get Employee and bring him up to the conference room. He affirmed that he personally observed Employee and he appeared to be impaired or under the influence. Lt. Sprague stated that Employee had Watery eyes, slurred speech. He cited that he notified IAD and he and Sergeant Jones took turns sitting with Employee in the Fifth District conference room while waiting for IAD. Tr. pgs. 122-127.

Lt. Sprague testified that Agent Cobbs responded from IAD and conducted the investigation. He noted that Agent Cobb asked for assistance in finding a breathalyzer test and U.S. Park Police responded and conducted a breathalyzer test. Lt. Sprague asserted that he assisted Agent Cobb with activating the body worn camera while the test was being conducted. He affirmed that he observed the test being conducted and he saw the test results, but he could not remember the specific results off the top of his head. Lt. Sprague stated that after the test was completed and IAD completed their interviews, Employee was placed in a non-contact status and sent home. Lt. Sprague testified that prior to this incident, Employee was always very polite, professional, and always tried to do the right thing. Tr. pgs. 127 – 129.

5) John Cobb ("Agent Cobb") – Tr. pgs. 131- 143

Agent Cobb has been assigned to the Internal Affairs Division, within MPD since June 2021. His duties include investigating all misconduct from Agency's sworn and civilian members. He testified that as the on-call agent that evening, he responded to investigate an allegation of a member, Employee, suspected of being under the influence of alcohol in the Fifth District. Agent Cobb cited that he was at home when he got the notification through the Command Information Center ("CIC") and he drove to the location for further investigation. He cited that he spoke to the watch commander, as well as a sergeant on the phone prior to his arrival at the scene to get an understanding of what he was walking into. Tr. pgs. 132-134.

Agent Cobb asserted that when he arrived at 5D, he made contact with the evening watch commander, Lt. Sprague. He explained that Lt. Sprague informed him that when Employee showed up for work, the evening sergeant smelled the odor of alcohol emanating from Employee's breath and Employee was asked to stay put while they made notifications. Agent Cobb cited that he observed Employee in the conference room in 5D and he was in plain clothes at the time. He stated that he did not smell an odor of alcohol on Employee, but to him, Employee appeared to have a "flushed face, his eyes appeared to be bloodshot to me." Tr. pgs. 135-137.

Agent Cobb stated that dispatch, made contact with an on-duty U.S. Park Police officer who was Standard Field Sobriety Test ("SFST") certified, and they administered the test while he observed. He also noted that he made sure it was captured on their BWC footage, and he took notes on what the alcohol level was at that time. Agent Cobb stated that "the time lapse between

[5] Sergeant Jones was also referred to as Sergeant Goode.

me understanding when this occurred to the time I got there, it was my approach that we were beyond this being investigated criminally. We later learned that no one had observed him operating a vehicle, he had not had a chance to get inside of an MPD cruiser. So as far as my approach as an investigator, we were just treating this administratively at this point. The purpose of obtaining a breath alcohol sample at that point would've been for administrative and preliminary report purposes." He stated that he could not remember the exact numbers of the test result. Agent Cobb identified Agency's Exhibit 11, page 228, as his preliminary report completed on October 9, 2023, the day after the incident. He identified his electronic signature on page 230, of that exhibit. Agent Cobb cited that the purpose of the preliminary report form was to provide a preliminary investigation into the early facts and circumstances of an event, specifically a misconduct allegation like in the current case. He affirmed that he documented the results of the preliminary breath test in this report. He asserted that the result from the test administered by the U.S. Park Police Officer was a .13. He stated that the U.S. Park Police Officer turned the device and showed him while he was standing there. Agent Cobb noted that Employee was free to leave the Fifth District after the test was administered and he got a ride from a family member. He cited that he did not have any further involvement with the investigation, and that Employee was served a revocation form 77, and his police powers were revoked that night as well. Tr. pgs. 137-143.

6) Sergeant Justin Goldston ("Sgt. Goldston") – Tr. pgs. 145-155

Sgt. Goldston has been employed with Agency for fifteen (15) years and is currently a sergeant assigned to the background investigation branch. He has been in his current role for about a year. Prior to that assignment, Sgt. Goldston was a patrol sergeant at 5D where he conducted roll calls, supervised personnel on the evening shift, conducted performance evaluations and internal investigations. He asserted that Employee was an officer assigned to the evening shift, where he, Sgt. Goldston was assigned to as well. He affirmed that he frequently worked with Employee. He noted that he worked with Employee for approximately a year and a half. Tr. pgs. 145-147.

Sgt. Goldston affirmed that he was aware that Employee had reported to work under the influence. He explained that he was the roll call official that day and Employee notified him that he was going to be late for work and requested at least the first two hours off. Sgt. Goldston cited that he conducted roll call and granted Employee the two (2) hours he requested. He asserted that while he was out in the streets, he received a phone call from Sgt. Jones informing him that Employee had showed up for work, and that she believed Employee was intoxicated. Sgt. Goldston stated that he responded back to 5D to assist Sgt. Jones with that situation. He cited that it took him approximately 20 minutes to return to 5D. Sgt. Goldston stated that Employee was in the sergeant office with Sgt. Jones when he arrived at 5D. He testified that he spoke with Employee and they sent him to the roll call room so they could discuss the situation. He affirmed that Employee appeared impaired when he spoke to him. Sgt. Goldston explained that Employee was slurring his speech a bit, having trouble balancing, and he smelled alcohol coming from Employee's person. Sgt. Goldston cited that Sgt. Jones took Employee's 'duty belt' which had his firearm, baton, radio, OC spray and handcuff from Employee and secured it. He stated that they decided to monitor Employee, while Sgt. Jones notified the watch commander. Tr. pgs. 147-150. Sgt. Goldston recalled making a statement to an IAD agent. Tr. pgs. 151.

Sgt. Goldston testified that Employee was motivated, he would run to every scene that came across the radio if he was allowed to, he needed some guidance, which wasn't atypical for an officer that was new in his capacity. Sgt. Goldston asserted that although he was not Employee's direct supervisor, he had a good working relationship with Employee. He affirmed that overall, he had a positive impression of Employee as a police officer and the work that he did. He cited that the current situation was the only negative impression he had about Employee he could recall. Tr. pgs. 152 -153.

Employee's Case-in-Chief

7) Employee - Tr. pgs. 155 - 199

Employee testified that he joined Agency in March 2022 because he wanted to give back to the community where he grew up. He was assigned to the 5D as a patrol officer, where his tour of duty was in the evening. He affirmed that in the month prior to the current incident, he was dealing with personal issues. He explained that his great grandmother and grandfather had just passed away and he was also dealing with personal relationships. Tr. pgs. 155-156.

Employee confirmed that there were times between October 2023, and November 2023 that he consumed alcohol to cope with the personal issues he described. Employee asserted that his problem with alcohol began in 2023 due to personal relationship issues. Employee explained that on the night before October 8, 2023, he had a few disagreements with his mom over the phone, and he was also grieving the loss of his grandparent and dealing with non-work-related personal relationships. Employee cited that he consumed about three (3) alcohol beverages on October 8, 2023. He affirmed that when he reported to work on October 8, 2023, he was intoxicated. Tr. pgs. 157-158, 175-176, 180, 185.

Employee testified that his tour of duty on October 8, 2023, was the evening tour. He cited that he called out for the first two (2) hours of his tour to try to get himself together to get his mind ready for work and because he had been drinking. Tr. pgs. 158, 176-179. Employee stated that when he got to work, he went to the Sergeant's Office to get his assignment and the sergeant, Sgt. Jones could smell the alcohol emanating from his person. He asserted that he explained what was going on to Sgt. Jones and he was asked to stand by and go to the conference room upstairs. Employee noted that he also spoke to Sgt. Goldston. He highlighted that he was not charged with any crimes because of what occurred that day, and that he got a ride back to his home from someone else that day. He confirmed that he was open and honest with Sgt. Jones and with the other officials he spoke with on that date. Tr. pgs. 158 -159. Employee cited that he started treatment at The National Capital Treatment Recovery Center after the October 8, 2023, incident and by November 16, 2023. Tr. pgs. 186-187.

Regarding the incident that occurred in November 2023 at the Waldorf liquor store, Employee testified that he and Ofc. Vaughn agreed to meet up at the restaurant to hang out, along with her cousin, Mr. Vaughn. He noted that he did not have any intention to drink when he went to the restaurant. Employee stated that he however consumed alcohol while at the establishment, so he gave his keys to Mr. Vaughn as he thought they were going to Ofc. Vaughn's residence and not another establishment. He asserted that while at the establishment, his firearm discharged inside of

his pocket. He affirmed that he was intoxicated at that time and he could not recall what happened inside the liquor store. He confirmed that he was arrested after the incident happened by Charles County Police and he provided a voluntary statement to the detective. He affirmed that he was charged with crimes based on what happened that evening. Employee testified that he was charged with three crimes: reckless endangerment, carrying a loaded handgun on my person and Driving While Intoxicated ("DWI"). He cited that he pled guilty to these charges and he received three (3) years of supervised probation and a year of Alcoholics Anonymous ("AA") as his penalty. Tr. pgs. 160-162.

Employee asserted that he brought his firearm with him in his car for protection. He confirmed that he was not licensed to carry a weapon in Maryland. He affirmed that he understood that it was unlawful for him to bring a weapon into Maryland, but he brought the weapon with him anyway. He explained that the firearm was inside his vehicle and he did not have any intention of bringing the firearm. He stated that the loaded firearm was already in his vehicle in the holster in the center console. Employee noted that he was not aware that the firearm was in the car at the time he drove into Maryland. He asserted that the firearm is not normally kept in the car, but he might have brought it into the car, but he does not recall when. He reiterated that although he previously testified that he brought the firearm because he was concerned about crime in Waldorf, "I don't believe I had any intentions on bringing it to Waldorf. I know that the weapon was inside of the vehicle." He also affirmed that the crime rate in Waldorf was the reason he brought the gun to Maryland. Employee cited that he did not bring the firearm into the Rock and Toss restaurant, and that he left it in his vehicle while he was at the restaurant. Employee noted that he did not know why he brought the firearm into the Waldorf Liquor store or when the firearm went off or why he drove away after the firearm went off because he was intoxicated at that point. He cited that the incident was an accident. Tr. 186-195.

Employee confirmed that after the October 2023, and November 2023, incidents, he sought help and treatment for his abuse of alcohol. Referring Employee's Tab 3, Employee cited that the National Capital Treatment and Recovery Center is a facility in Arlington, Virginia that works with substance abuse for any person that is trying to get help. He affirmed that he attended this program. Employee described Harbor of Grace Recovery Center as an exceptional wellness facility that deals with people seeking treatment. He highlighted that he went to this facility twice and during his time there, he learned a lot about himself and that he regained his wellness while he was there. Employee provided a summary of the coping mechanisms other than alcohol to help him take better care of himself. He also testified that he sought help through the Kaiser Permanente program that is geared towards substance abuse. He cited that he was still participating in the Kaiser Permanente program as of the date of the Trial Board Hearing. Employee asserted that he also attended an Alcohol Anonymous class through the Employee Assistant Program ("EAP") that is geared towards law enforcement and with the MPD. He confirmed that he was still attending Alcoholics Anonymous meetings. Employee reviewed reference letters from colleagues, friends and people he met while seeking treatment after the October and November 2023, incidents. Tr. pgs. 163-172.

Employee apologized for the two (2) incidents, and he noted that he has learned a lot from them. He explained that the "broken me down, but it showed me how to be a better person for myself. How to take better care of myself. I've learned that it's not, when you're not okay, it's okay

to not be okay." He cited that he has a great support system now and he confirmed that he still wanted to be a member of the MPD. Tr. pgs. 173-174.

Panel Findings[6]

The Trial Board Panel made the following findings of fact based on their review of the evidence presented at the hearing:

1) [Employee] was employed by the Metropolitan Police Department on March 29, 2020, and upon graduation from the academy, was assigned to the Fifth District.

2) On October 8, 2023, [Employee] was scheduled to work the evening tour of duty, however, at approximately 1200 hours [he] began consuming alcohol after an argument with his mother. [Employee] consumed a total of three (3) alcoholic beverages.

3) On October 8, 2023, [Employee] called Fifth District Sergeant Goldston to request the first two hours of annual leave for his tour that day. The leave was granted and [Employee] responded to Fifth District, arriving at approximately 1704 hours.

4) Once at work, [Employee] spoke with Sergeant Shanell Jones, who immediately recognized that [Employee] appeared intoxicated. Sergeant Jone alerted Sergeant Goldston and Lieutenant John Sprague of [Employee'] potential intoxication and secured his MPD issued property.

5) Sergeants Goldston and Jones advised [Employee] to wait in the commander's conference room until Lieutenant Sprague was able to respond and assess the situation. Once Lieutenant Sprague observed [Employee] and suspected he was intoxicated, he made notification to the Internal Affairs Division (IAD).

6) Agency John Cobb was the on-call agent for October 8, 2023, and responded to the Fifth District to investigate the allegation that [Employee] was intoxicated while on duty. After an initial investigation, Agent Cobb determined that the investigation would be handled as an administrative matter as opposed to a criminal offense.

7) Once it was apparent to Agent Cobb that [Employee] was indeed intoxicated, he made notification through the on-duty dispatcher for a Standard Field Sobriety Test certified officer to respond from the United States Park Police.

8) U.S. Park Police Officer Doherty responded to the Fifth District and administered a Preliminary Breath Test (PBT) which indicated that [Employee's] Blood Alcohol Content (BAC) was .13.

9) Agent Cobb issued Employee a PD Form 77, revoking him of his police powers, generated Incident Summary Number 23003805 to document the alleged misconduct, and completed

[6] Agency's Answer to the Petition at TAB 8 (June 24, 2025).

a PD Form 901-A, a preliminary report form for misconduct, duty status, and unusual incidents. [Employee] received a ride home from a family member.

10) On November 16, 2023, [Employee] completed an interview with IAD, in which he stated he was receiving treatment for his problem with alcohol.

11) On November 25, 2023, [Employee] drove his 2021 Chevrolet Malibu bearing Maryland temporary registration [T*******], and met with Fifth District Officer Gina Vaughn and her cousin, Mr. Darrell Vaughn, at the Rock and Toss Crab House located at 2829 Festival Way Waldorf, Maryland, where he consumed alcohol beverages to the point of intoxication.

12) When leaving the restaurant, [Employee] gave his car keys to Mr. Vaughn, with the impression they were driving to Officer Vaughn's residence. However, Mr. Vaughn drove them to the Waldorf Liquor store.

13) Once at Waldorf Liquor, [Employee] obtained his personally owned firearm from the center console of his vehicle, removed it from its holster and placed the firearm in his right pants pocket before entering the store. [Employee] did not have a valid license to carry a concealed firearm in the State of Maryland.

14) While inside the store, waiting near the checkout register, [Employee] negligently discharged his personally owned firearm while it was still inside his right pant pocket. The discharge projectile caused non-life-threatening injuries to Mr. Vaughn, caused damage to Officer Vaughn's jacket, and the floor of the liquor store.

15) [Employee] fled the location, entering his personal vehicle where he disassembled his personally owned firearm, placing the slide behind the driver's seat on the passenger's floorboard and the receiver in the vehicle's glove box. [Employee] then drove back to the Rock and Toss Crab House, before driving to Officer Vaughn's residence, and then back towards Waldorf Liquor.

16) After the negligent discharge, Mr. Vaughn called the police and Charles County Sheriff's Office (CCSO) Deputies responded to the scene, with Detective Hakim Burgess assuming the lead on the investigation. Detective Burgess broadcast a lookout for [Employee's] vehicle and a traffic stop was initiated on southbound US-301, near Action Lane.

17) After conducting a felony traffic stop, [Employee] was placed under arrest by Sheriff's deputies and interviewed by Detective Burgess.

18) Officer Gina Vaughn made notification of the incident to the on-duty Fifth District Watch Commander. Lieutenant Zunnobia Hakir, who in-turn made notification to the IAD.

19) IAD Agents Jacquelon Lea and Richard Erlich responded to the Charles County Sheriff's Office, Criminal Investigation Division, and served [Employee] with another PD Form 77, placing him in an administrative leave with pay duty status.

20) Agent Lea obtained Incident Summary Number 23004469 to document the alleged misconduct, and completed a PD Form 901-A, a preliminary report form for misconduct, duty status, or unusual incidents.

21) On November 25, 2023, CCSO Detective Burgess obtained a search warrant for [Employee's] vehicle. The search warrant was executed on November 28, 2023, and the following recoveries were made:

    a. One disassembled Glock 19 handgun bearing serial number BVHB604
        i. Received component inside the glove box
        ii. Slide component located on the driver's side rear passenger floorboard
    b. Three hundred eighty-six (386) live rounds in the trunk
    c. Two (2) "CBC 9mm Luger" shell casings from the trunk
    d. One (1) "Federal 45 Auto" shell casing from the trunk
    e. Ten (10) live rounds from the center console
    f. One (1) live round from the front passenger's seat
    g. One (1) "Win 9mm Luger" shell casing from the front passenger's floorboard
    h. One (1) black holster from the center console

22) On November 29, 2023, the District Court of Charles County, Maryland, issued a criminal summons charging [Employee] with two (2) counts of Reckless Endangerment, Loaded Handgun in Vehicle and Loaded Handgun on Person. [Employee] was also issued citation for Driving, Attempting to Drive a Vehicle While Under the Influence of Alcohol and Driving, Attempting to Drive a Vehicle While Impaired by Alcohol.

23) On December 1, 2023, [Employee] was served the criminal summons.

24) On January 26, 2024, [Employee] was criminally indicted for Assault First Degree, Firearm Use/Felony/Violent Crime, three counts of Reckless Endangerment, Loaded Handgun in Vehicle, Loaded Handgun on Person, Driving, Attempting to Drive a Vehicle While Under the Influence of Alcohol and Driving, Attempting to Drive a Vehicle While Impaired by Alcohol.

25) Following the criminal indictment, the court case was transferred from the District Court for Charles County, Maryland, Circuit Court for Charles County, Maryland, and a trial date was set for June 24, 2024.

26) On June 18, 2024, [Employee] plead (sic) guilty to three of the charges including: Reckless Endangerment (Misdemeanor), Loaded Handgun on Person (Misdemeanor), and Driving, While Impaired (Misdemeanor).

27) On July 23, 2024, IAD Agent Harrison Grubbs, who was assigned to investigate Employee's misconduct, completed his investigation.

28) On July 29, 2024, [Employee] was served a Notice of Proposed Adverse Action where he requested an Adverse Action Hearing.

29) On August 1, 2024, [Employee], as a condition of his release, was sentenced to home detention until November 22, 2024. [Employee] ultimately received three years supervised release and was ordered to attend Alcoholics Anonymous (AA) meetings for a period of one year.

30) A Trial Board Hearing was conducted on February 14, 2025, which presented document evidence, report documentation, and testimonies of witnesses.

Upon consideration and evaluation of all the testimony and factors, as well as the relevant *Douglas* factors,[7] the Trial Board Panel found as follows:

DRD # 073-24:

1) Charge No.1: Specification No. 1: Guilty – Tier 4 - Termination
2) Charge No. 2: Specification No. 1: Guilty – Tier 3 – 20 days suspension
3) Charge No. 3: Specification No. 1: Guilty – Tier 4 - Termination
4) Charge No. 4: Specification No. 1: Guilty – Tier 4 Termination

DRD #518-24

1) Charge No.1: Specification No. 1: Guilty – Tier 4 - Termination
2) Charge No. 1: Specification No. 2: Guilty – Tier 4 - Termination
3) Charge No. 1: Specification No. 3: Guilty – Tier 4 - Termination
4) Charge No. 1: Specification No. 4: Guilty – Tier 4 - Termination
5) Charge No. 1: Specification No. 5: Guilty – Tier 4 - Termination
6) Charge No. 2: Specification No. 1: Guilty – Tier 3 - Termination
7) Charge No. 3: Specification No. 1: Guilty – Tier 3 – 30 days suspension
8) Charge No. 4: Specification No. 1: Guilty – Tier 4 - Termination
9) Charge No. 5: Specification No. 1: Guilty – Tier 4 - Termination

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW[8]

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,[9] OEA has a limited role where a departmental hearing has been held. According to *Pinkard*, the D. C. Court of Appeals found that OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The

[7] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981).
[8] 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").
[9] 801 A.2d 86 (D.C. 2002).

statute gives OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.[10] The Court of Appeals held that:

> "OEA may not substitute its judgment 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."

Additionally, the Court of Appeals found that OEA's broad power to establish its own appellate procedures is limited by Agency's Collective Bargaining Agreement. Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, 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 & Emergency Medical Services Department;
>
> 2. The employee has been subjected to an adverse action;
>
> 3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
>
> 4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; *and*
>
> 5. *At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing*, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee (emphasis added).

There is no dispute that the current matter falls under the purview of *Pinkard*. Employee is a member of the Metropolitan Police Department and was the subject of an adverse action (termination); Employee is a member of a Union - Fraternal Order of Police ("FOP"), which has a Collective Bargaining Agreement ("CBA") with Agency. The CBA contains language similar to that found in *Pinkard* and Employee appeared before an Adverse Action Panel on February 14, 2025, for an evidentiary hearing. This Panel made findings of fact, conclusions of law and recommended that Employee be terminated for the current charges. Consequently, I find that *Pinkard* applies in this matter. Accordingly, pursuant to *Pinkard*, OEA may not substitute its

[10] *See* D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

judgement for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of (1) whether the Adverse Action Panel's decision was supported by substantial evidence; (2) whether there was harmful procedural error; and (3) whether Agency's action was done in accordance with applicable laws or regulations.

1) Whether the Adverse Action Panel's decision was supported by substantial evidence

Pursuant to *Pinkard*, I must determine whether the Adverse Action Panel's ("Panel") decision was supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[11] If the Panel's findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record to support findings to the contrary.[12] Employee admitted to drinking prior to arriving at work on October 8, 2023. Employee cited that he consumed about three (3) alcohol beverages and he affirmed that when he reported to work on October 8, 2023, he was intoxicated. The Trial Board noted that Employee drank to the point of intoxication while at his residence and drove his personal vehicle to work. It cited that while Employee was not criminally charged, Employee admitted to driving while intoxicated, which constitutes a misdemeanor under the District of Columbia Code had charges been filed. Regardless of Employee's protestation to the contrary, and based on the record, I find that the Trial Board provided substantial evidence for all the charges and specifications as found in **DRD # 073-24**.

Regarding the November 25, 2023, incident, Employee stated that he consumed alcohol while at the restaurant. He asserted that his firearm was discharged inside of his pocket at the Waldorf Liquor store. Employee affirmed that he was intoxicated at that time and he could not recall what happened inside the liquor store. He confirmed that he was arrested after the incident happened by Charles County Police. Employee affirmed that he was not licensed to carry a weapon in Maryland. He testified that he was charged with, and he pled guilty to reckless endangerment, carrying a loaded handgun on my person and Driving While Intoxicated ("DWI"). Employee does not deny that he was investigated by the Charles County Sheriff's Office when his personal firearm was discharged at a public place – Waldorf Liquor store. Further, Employee acknowledged that he was intoxicated and he drove his personal vehicle while intoxicated from the liquor store after his firearm was discharged. The Trial Board cited that each of the offenses Employee committed on November 25, 2023, violated Agency's policies and were detrimental not only to Employee but to the Agency as a whole. Upon review of the record, I find that the Trial Board Panel met its burden of substantial evidence for **DRD #518-24** (1) Charge No.1: Specification Nos. 1-5; (2) Charge No. 3: Specification No. 1; (3) Charge No. 4: Specification No. 1; and Charge No. 5: Specification No. 1.

For **DRD #518-24** (1) Charge No. 2: Specification No. 1., I find that the Panel's findings are not supported by substantial evidence. General Order Series 120.21, Attachment A, 7, provides that, "*Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty. Three sustained adverse actions within a 12-month period upon charges involving misconduct, as*

[11] *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[12] *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987).

provided in this section, shall be prima facie evidence of inefficiency. The adverse action charges need not be related." (Emphasis added). Both parties admitted that Employee had two (2) and not the required three sustained adverse actions within the past 12-month period. The Trial Board Panel cited that it considered a June 16, 2023 (IS 23002254) misconduct, the October 8, 2023, (IS 23003805/ **DRD # 073-24**) and the November 25, 2023, (IS 23004469/ **DRD #518-24**) misconducts (which were both pending before the Trial Board Panel) in support of this Charge. I find that because the October 8, 2023, and November 25, 2023, actions of misconduct were pending before the Trial Board Panel and not sustained, they do not meet General Order Series 120.21, Attachment A, 7, requirement of *Three sustained adverse actions within a 12-month period upon charges involving misconduct*. (Emphasis added). Accordingly, I conclude that The Panel has not met its burden of substantial evidence for **DRD #518-24** (1) Charge No.2: Specification No. 1.

2) Whether there was harmful procedural error

Pursuant to *Pinkard* and OEA Rule 634.6, the undersigned is required to make a finding of whether or not MPD committed harmful error. OEA Rule 634.6 provides as follows: "notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action." The parties do not allege any harmful procedural error in this matter.

3) Whether Agency's action was in accordance with law or applicable regulation

Employee pled guilty to the following charges during the Trial Board Hearing: **DRD # 073-24:** (1) Charge No. 3: Specification No. 1; (2) Charge No. 4: Specification No. 1; **DRD #518-24** (1) Charge No.1: Specification Nos. 1-5; (2) Charge No. 3: Specification No. 1; and (3) Charge No. 4: Specification No. 1. Additionally, I find that there is substantial evidence in the record to support the charges in **DRD # 073-24**: Charge No. 1: Specification No. 1 and **DRD # 073-24**: (1) Charge No. 2: Specification No. 1. There is also sufficient evidence in the record to support Agency's charge as described under **DRD #518-24** Charge No. 5: Specification No. 1. Therefore, I conclude that Agency's action was in accordance with law or applicable regulations.

As noted above, I find that the record does not support a charge under General Order Series 120.21, Attachment A, 7[13], as stated under **DRD #518-24** (1) Charge No. 2: Specification No. 1. Employee did not have *three sustained adverse actions within a 12-month period upon charges involving the current misconduct*. (Emphasis added). Accordingly, I conclude that Agency has not met its burden of proof for **DRD #518-24** (1) Charge No.2: Specification No. 1., as such, Agency cannot rely on this charge to discipline Employee.

[13] "*Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty. Three sustained adverse actions within a 12-month period upon charges involving misconduct, as provided in this section, shall be prima facie evidence of inefficiency. The adverse action charges need not be related*."

Whether the Penalty was Appropriate

Agency asserts that its consideration of penalty met the standard in *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985). It cites that the Trial Board Panel conducted a full examination of all the *Douglas* factors and that OEA should defer to its reasonable decision to terminate Employee. It states that Employee's termination was a reasonable exercise of managerial discretion, therefore, his termination should be upheld. Employee on the other hand argues that by electing to terminate him, Agency failed to properly analyze and weigh the *Douglas* factors. Employee avers that Agency failed to reasonably apply the *Douglas* factors to the evidence in the record, accordingly, the penalty of termination should be reversed.

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).[14] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalty; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. An Agency's decision will not be reversed unless it fails to consider relevant factors or the imposed penalty constitutes an abuse of discretion.[15] Here, Agency presented evidence that it considered relevant factors as outlined in *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981), in reaching the decision to terminate Employee.[16] Specifically, the Trial Board Panel provided a thorough analysis of the *Douglas* factors with its findings in this matter. The *Douglas* factor analysis included in the record

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[14] *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).

[15] *Butler v. Department of Motor Vehicles,* OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C.Reg. 352 (1985).

[16] In *Douglas v. Veterans Administration*, the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows: (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.

demonstrates that Agency considered all factors in imposing the penalty of termination in this matter and the record evidence does not establish that the penalty of termination constituted an abuse of discretion.

Employee cites that DRD # 073-24 Charge No. 3, Specification No. 1 - General Order 120.21, Attachment A, 11, which states, "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violation of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia*" should have been classified as a Tier 3, and not Tier 4 penalty pursuant to General Oreder 120.21, Attachment A, Part B (Table of Penalties Guide), with a presumptive penalty range of 11-30 days suspension. The Trial Board Panel cited that Employee's misconduct adversely impacted Employee's ability to perform his job effectively, thereby hindering the Department's ability to perform effectively. The Trial Board Panel also asserted that by engaging in misconduct that would constitute a crime, had criminal charges been brought against him, Employee brought discredit to himself and to the Department. The Table of Penalties Guide provides examples of penalty levels for non-categorized offenses, and it states that *these examples are not exhaustive*, but intended to provide guidance (emphasis added). As provided in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office. Consequently, I conclude that Agency correctly classified the current charge under Tier 4 penalty, and its chosen penalty of termination is within the range allowed by law, regulation, and any applicable Table of Penalties.

Additionally, Employee contends that DRD # 073-24 Charge No. 4, Specification No. 1 – General Order 120.21, Attachment A, 24, which states, *"[a]ny conduct not specifically set forth in this order, which is detrimental to the reputation and good o order of the police force, or involving failure to obey, or properly observe any of the rules, regulations and orders relating to the discipline and performance of the force"* should have been classified as a Tier 3, and not Tier 4 penalty pursuant to General Oreder 120.21, Attachment A, Part B (Table of Penalties Guide), with a presumptive penalty range of 11-30 days suspension. Employee argues that he was corporative with the administrative investigation and that no witness testified that Employee's conduct tarnished the image and legacy of the agency. That notwithstanding, the Trial Board Panel cited that Employee admitted consuming alcohol to the point of intoxication before entering his personally owned vehicle and navigated the streets of the District of Columbia, not only endangering his own life, but the lives of residents and visitors. The Trial Board Panel also asserted that Employee's intoxication was witnesses by members of an outside agency (United States Park Police), which brough discredit not only on Employee but on the Agency as a whole. I agree with Agency's assertion and conclude that Employee's misconduct in DRD # 073-24 Charge No. 4, Specification No. 1 falls within a Tier 4 penalty. Therefore, I find that the penalty of termination is within the range allowed by law, regulation, and any applicable Table of Penalties.

Employee also asserts that the penalties for DRD # 518-24 Charge Nos. 1, 3 and 4, are not supported by substantial evidence. He argues that although he pled guilty, the circumstances do not warrant termination. Employee maintains that he took responsibility for his actions and he has completely been rehabilitated. While the record reflects Employee's assertion, I find that Agency's

chosen penalty of termination for these charges is within the range allowed by law, regulation, and any applicable Table of Penalty.

Disparate Treatment

Employee contends that for *Douglas* factor No. 7, Agency failed to consider any of the comparable employees it presented during the Trial Board Hearing. This raises the issue of disparate treatment. The Trial Board Panel found this *Douglas* factor to be neutral. It highlighted that based on a thorough review of the facts of the investigation, and the sustained findings, the proposed penalty against Employee is consistent and appropriate.

In *Jordan v. Metropolitan Police Department*,[17] the OEA Board held the following with respect to a claim of disparate treatment:

> [An agency must] apply practical realism to each [disciplinary] situation to ensure that employees receive fair and equitable treatment where genuinely similar cases are presented. It is not sufficient for an employee to simply show that other employees engaged in misconduct and that the agency was aware of it, the employee must also show that the circumstances surrounding the misconduct are substantially similar to his own. Normally, in order to show disparate treatment, the employee must demonstrate that he or she worked in the same organizational unit as the comparison employees and that they were subject to [disparate] discipline by the same supervisor [for the same offense] within the same general time period.

OEA has further held that, to establish disparate treatment, an employee *must* show that he worked in the same organizational unit as the comparison employees. 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).[18] Further, "in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty."[19] (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."[20] If 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.[21]

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[17] OEA Matter No. 1601-0285-94, Opinion and Order on Petition for Review (September 29, 1995).
[18] *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).
[19] *Metropolitan Police Department v. D.C. Office of Employee Appeals, et al.*, No. 2010 CA 002048 (D.C. Super. Ct July 23, 2012); citing *Social Sec. Admin. V. Mills*, 73 M.S.P.R. 463, 473 (1991).
[20] *Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15, Opinion and Order on Petition for Review (January 30, 2018) (citing *Boucher v. U.S. Postal Service*, 118 M.S.R.P. 640 (2012)).
[21] *Id*.

Here, I find that none of the comparator employees were similarly situated as Employee. Most of the comparator employees were not disciplined within the same general time period as Employee – they were disciplined at least two (2) years before Employee, others were disciplined by a different supervisor than Employee. Moreover, Employee was disciplined for two (2) separate misconduct that occurred within a short period of time (October 8, 2023, and November 25, 2023). In addition, I find that there is not "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." Consequently, I find that these comparator employees are not similarly situated to Employee. Therefore, I further find that Employee has not established a *prima facie* showing of disparate treatment and as such, I conclude that Employee has failed to prove that he was subjected to disparate treatment.

Penalty Based on Consideration of Relevant Factors

Although OEA has a "marginally greater latitude of review" than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate.[22] The "primary discretion" in selecting a penalty "has been entrusted to agency management, not to the OEA."[23] Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case.[24] 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 OEA were in MPD's shoes in the first instance; such an approach would fail to make proper deference to the Agency's primary discretion in managing its workforce. Rather, OEA's review of an agency-imposed penalty is essentially to ensure that MPD conscientiously considered the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if OEA finds that the agency failed to weigh the relevant factors, or that MPD's judgment clearly exceeded the limits of reasonableness, is it appropriate for OEA then to specify how the MPD's decision should be corrected to bring the penalty within the parameters of reasonableness.[25]

A review of the record reveals that Agency's decision to terminate Employee was proper. Agency had cause to discipline Employee for **DRD # 073-24**: (1) Charge No. 1: Specification No. 1; (2) Charge No. 2: Specification No. 1: (3) Charge No. 3: Specification No. 1; and (4) Charge No. 4: Specification No. 1.; and for **DRD #518-24**: (1) Charge No.1: Specification Nos. 1-5; (2) Charge No. 3: Specification No. 1; (3) Charge No. 4: Specification No. 1: and (4) Charge No. 5: Specification No. 1. As previously noted, when an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment.[26] I conclude that given the totality of the circumstances as enunciated in the instant decision, the penalty of termination is within the range allowed by law, regulation or

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[22] *See*, *Douglas v. Veterans Administration*, 5 MSPB 313, 328, 5 M.S.P.R. 280, 301(1981) (Federal Merit Protection Board case); Raphael 740 A. 2d 945).
[23] *Id*.
[24] *Id*.
[25] *Raphel* 740 A. 2d at 945.
[26] *See Stokes*, *supra*; *Hutchinson*, *supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (September 21, 1995).

guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. Therefore, I find that Agency's action of removing Employee from service should be upheld.

ORDER

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

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge