

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	
Employee)	OEA Matter No. 1601-0013-21
)	
v.)	Date of Issuance: January 7, 2022
)	
D.C. DEPARTMENT OF CORRECTIONS,)	MONICA DOHNJI, ESQ.
Agency)	Senior Administrative Judge
)	

Employee, *Pro Se*
Bradford Seamon, Esq., Agency’s Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On January 19, 2021, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Corrections’ (“DOC” or “Agency”) decision to suspend her for fifteen (15) days from her position as an Operations Research Analyst, effective January 4, 2021. Employee was suspended for Conduct Prejudicial to the District Government: use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarrelling; creating a disturbance or disruption; or inappropriate horseplay, pursuant to District of Columbia Municipal Regulation (“DCMR”) 1607.2(a)(16). On April 19, 2021, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on August 5, 2021. On August 13, 2021, I issued an Order scheduling a Status/Prehearing Conference for September 9, 2021. The Conference was rescheduled for September 14, 2021. Both parties were in attendance. Thereafter, the undersigned issued a Post Status/Prehearing Conference Order requiring the parties to submit briefs. Both parties have submitted their respective briefs. Upon review of the record and considering the parties’ arguments as presented

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

in their submissions to this Office, I have decided that there are no material facts in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

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

ISSUE

- 1) Whether Agency had cause to discipline Employee for: Conduct Prejudicial to the District Government: use of abusive, offensive, *unprofessional*, distracting, or otherwise unacceptable language, gestures, or other conduct; quarrelling; creating a disturbance or disruption; or inappropriate horseplay, pursuant to District of Columbia Municipal Regulation (“DCMR”) 1607.2(a)(16) (emphasis added);
- 2) Whether the adverse action against Employee was in retaliation for her 2019 Equal Employment Opportunity (“EEO”) complaint against another co-worker;
- 3) Whether Agency engaged in disparate treatment; and
- 4) Whether the penalty of a fifteen (15) days suspension is appropriate under District law, regulations or the Table of Illustrative Actions.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW²

² Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) (“The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence”).

The following findings of fact, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA.

Employee has been employed as an Operations Research Analyst with Agency since 2015. Due to the COVID pandemic in 2020, Agency went into remote telework mode and limited contact with others. Employee was issued an Agency laptop to carry out her assignments. Between September and October of 2020, Employee had issues with her government-issued laptop. She informed her supervisor, Dr. Chakraborty, of the issues with her laptop via email. In late October 2020, Dr. Chakraborty provided advanced notice to the entire Strategic Planning and Analysis department that a team meeting would be held on November 4, 2020, to discuss Fiscal Year 2021 ("FY21") performance plans and team goals, as well as separate meetings with each team member on November 5, 2020, to discuss individual FY21 performance plans and SMART Goals. Employee participated in the November 4, 2020 team meeting via the Microsoft Teams chat because she was unable to connect the audio on her Agency-issued laptop on November 4, 2020. Employee still had issues using her Agency issued laptop on November 5, 2020. Thus, she called into the November 5, 2020, individual meeting with her personal phone. Dr. Chakraborty recorded the meeting. During the November 5, 2020, meeting, Employee and her supervisor disagreed on some aspects of her performance. Dr. Chakraborty informed Employee during the call that Employee's tone was unprofessional, disrespectful and could become a roadblock to Employee's success. Employee denied being disrespectful. Employee's phone was disconnected from the call while the meeting was ongoing. Employee called backed into the meeting, but her supervisor had already ended the call.

At 09:12 a.m. on November 5, 2021, Employee emailed Dr. Chakraborty, informing her that her phone died, and that she called back. However, Dr. Chakraborty did not respond. Employee also noted that she would work on her performance goals as requested.³ Dr. Chakraborty responded to Employee's email at 09:30 a.m., apologizing for missing Employee's call. She however, noted that Employee disconnected the call without allowing her to finish her feedback. She also provided Employee with a deadline to submit her SMART goals. In another email sent that same day at 09:34 a.m. by Employee to Dr. Chakraborty, and copying Agency's Deputy Director of Administration, Stewart-Ponder Gitana ("Stewart-Ponder"); Employee noted that (1) she did not consent to being recorded; (2) her phone died during the call, she charged it and called Dr. Chakraborty back, but she did not pick up; (3) she was not obligated to use her personal device to speak with Dr. Chakraborty, she only did so because Microsoft Teams did not have audio or a microphone; (4) Dr. Chakraborty seemed to be focused on her tone and examples of how she is disrespectful, but not on her 2021 performance goals; and (5) Dr. Chakraborty exceeded the 30 minutes allotted for the performance review. Employee concluded that if Dr. Chakraborty wanted another meeting, she should send a plan.⁴

Stewart-Ponder responded to Employee's email at 09:55 a.m. on November 5, 2020. Stewart-Ponder stated that Employee was provided with the tools to conduct her job. He also accused Employee of lying about her Microsoft Teams' audio not working. Stewart-Ponder informed Employee that the District of Columbia was a one-party consent jurisdiction with

³ Petitioner's Brief in Response to Judge's Order dated September 22, 2021 at Exhibit A (October 13, 2021).

⁴ *Id.*

regard to recording; therefore, Dr. Chakraborty did not need Employee's permission to record. Stewart-Ponder concluded that Employee did not participate with the level of professionalism that was expected of an employee at Agency.⁵

On December 2, 2020, Stewart-Ponder issued an Advance Notice of Proposed Suspension for 15-days ("Proposed Notice") for Employee's conduct during the November 5, 2020, meeting with Dr. Chakraborty, and the subsequent emails Employee sent on November 5, 2020. Employee was charged with violating 6 DCMR § 1607.2(a)(16): Conduct Prejudicial to the District Government – "[u]se of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay."⁶ On December 9, 2020, Employee filed a response to the Proposed Notice.⁷ Agency issued its Final Decision on December 15, 2020, suspending Employee for fifteen (15) days, along with a *Douglas* factor analysis.⁸ On January 19, 2021, Employee filed a Petition for Appeal with OEA.

Employee's Position

In her Petition for Appeal, Employee requests that her suspension be rescinded because of inaccurate information and the misapplication of the *Douglas* factors. She explains that the penalty of fifteen (15) days suspension was harsh and in retaliation for her exercising her rights to file complaints with the EEOC and Department of Human Rights against another co-worker. Employee notes that Stewart-Ponder issued the Proposed Notice because Employee's direct supervisor, Dr. Chakraborty, was being investigated by the Office of Human Rights for issuing an erroneous Proposed Letter of Reprimand to Employee on May 6, 2020. Employee further contends that other Agency employees have been issued suspension notices for more serious offenses, and they have had their suspensions reduced.⁹ Employee included Agency's FY18 – FY20 Oversight Committee Submission in support of her assertion.¹⁰

In her October 13, 2021, brief, Employee acknowledged raising her voice during the November 5, 2020, Microsoft Teams meeting with Dr. Chakraborty; however, she argues that her conduct was not serious enough to warrant adverse action. She explains that she responded that way out of sheer frustration resulting from multiple adverse actions taken only against her, mental stress, Dr. Chakraborty's handling of her EEO complaint, and Dr. Chakraborty's mischaracterization of the meeting.¹¹ Employee alleges that she was reassigned to a new work location – D.C. Jail, in retaliation for filing an EEO complaint against another co-worker. She maintains that prior to her filing the EEO complaints, her performance was never in question or problematic to Dr. Chakraborty. Employee also notes that Dr. Chakraborty had never previously

⁵ *Id.*

⁶ Agency Answer at Exhibit 3 (April 19, 2021).

⁷ See Petition for Appeal, *supra*,

⁸ Agency Answer, *supra*, at Exhibit 2.

⁹ Petition for Appeal (January 19, 2021).

¹⁰ *Id.*

¹¹ Petitioner's Brief in Response to Judge's Order dated September 22, 2021 (October 13, 2021).

complained that Employee's behavior was unprofessional, and that Dr. Chakraborty seemed to have understood Employee's frustration as evidenced in the November 5, 2020, email.¹²

Additionally, Employee asserts that her former co-worker – Mark Pflaum, who was similarly situated, and also a direct supervisee of Dr. Chakraborty was never subjected to any adverse action despite engaging in verbal abuse, inappropriate behavior and unprofessional conduct in January of 2019.¹³

Employee contends that, since she was hired in 2015, but for the May 6, 2020, Letter of Reprimand, she has had no infractions or been subjected to discipline. She explains that she has comported herself in a professional manner at all times and her only issue has been with the former co-worker– Mark Pflaum, who was harassing her. Employee also explains that the May 6, 2020, Letter of Reprimand is still pending with the Office of Human Rights; therefore, it should not be used as a prior disciplinary action.¹⁴ Employee avers that the fifteen (15) days suspension levied against her is not appropriate because Agency did not engage in progressive discipline, in violation of DCMR § 601.4 and § 601.5. Employee also states that the fifteen (15) days suspension does not align with Agency's disciplinary procedures as outlined in Agency's Performance Oversight Hearing document. Employee concludes that the Table of Illustrative Actions is not applicable in her case because the nature of the offense does not rise to the level of severity as outlined. She reiterated that the penalty was not progressive, but rather punitive and retaliatory.¹⁵

Agency's Position

In its November 12, 2021, brief to this Office, Agency asserts that the adverse action taken against Employee was done for cause.¹⁶ Agency states that, although Employee admitted that she raised her voice during her November 5, 2020 call with Dr. Chakraborty, Employee fails to recognize that she was not disciplined for simply elevating her voice. She was disciplined for being extremely defiant and uncooperative during her FY21 performance plan meeting with Dr. Chakraborty and in subsequent emails to Dr. Chakraborty, which amounted to offensive, unprofessional, and unacceptable conduct in violation of District regulation.¹⁷ Agency maintains that Employee exhibited this behavior towards her supervisor, not a mere co-worker. It explained that by being unwilling to accept any suggestions or feedback from her immediate supervisor, Employee severely impeded her ability to improve her work performance. Agency avers that, conduct such as refusing to answer a supervisor's work-related question or hanging up the phone during a meeting with a supervisor cannot be tolerated by the Agency.¹⁸ Agency notes that, even

¹² *Id.* at Exhibit A. This is an email from Dr. Chakraborty to Employee dated November 5, 2020, time stamped 09:30:57 a.m., wherein Dr. Chakraborty responded to Employee's email on the same day notifying Dr. Chakraborty that her phone died during the meeting. In the email, Dr. Chakraborty stated that, Employee disconnected the phone without allowing her to finish her feedback. She also apologized for missing Employee's phone call and proceeded to request that Employee submit her SMART goals by November 10, 2020.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Agency's Brief in Support of 15-day Suspension (November 12, 2021).

¹⁷ *Id.*

¹⁸ *Id.*

after the meeting was over and Employee had time to reflect, she continued to demean Dr. Chakraborty on an email thread that also included Deputy Director Stewart-Ponder. Agency asserts that neither Dr. Chakraborty nor Deputy Director Stewart-Ponder found Employee's behavior to be normal and the fact that Employee had past gripes with Dr. Chakraborty or the Agency generally, does not excuse her behavior.¹⁹ Agency contends that Employee is responsible for maintaining her professionalism at all times while on duty, particularly during an official meeting with a supervisor.

Agency argues that Employee's suspension was not retaliatory in response to previous complaints that she filed against Mr. Pflaum. Agency provides that Employee has failed to demonstrate why either Dr. Chakraborty, Deputy Director Stewart-Ponder, or Director Quincy Booth would retaliate against her for complaints that were not made against them.²⁰ Agency notes that Employee's assertion that Dr. Chakraborty's motive to retaliate against her arose from Dr. Chakraborty's long-term one-on-one working relationship with Mr. Pflaum, is completely baseless. It explains that Dr. Chakraborty's working relationship with Mr. Pflaum was no different than her relationship with other analysts employed in the unit. Agency maintains that Employee's suspension was the result of her own behavior and nothing else.²¹

Agency argues that the fifteen (15) days suspension was an appropriate penalty. Agency explains that 6B DCMR § 1607(a)(16) permits a 15-day suspension to be assessed for a first occurrence of this type of conduct. Therefore, it was well within its discretion under the District Personnel Manual ("DPM") to levy the 15-day suspension. Agency also highlights that, 6B DCMR § 1610.2 provides that, "when appropriate, and consistent with §§ 1606 and 1607, management may skip any or all of the progressive steps outlined in § 1610.1." Accordingly, Agency argues that the progressive discipline steps outlined in 6B DCMR § 1610.1 are directory and *not* mandatory, and it was therefore not *required* to utilize a progressive process even though it did.²²

Agency however, reiterated that the 15-day suspension was a follow-up to the Letter of Reprimand ("LOR") that was issued to Employee in May of 2020. Agency asserts that the LOR, is a corrective action as defined by 6B DCMR § 1613.1, and it targeted Employee's refusal to complete her assignments despite ample opportunity and constant reminders from Dr. Chakraborty. Agency states that when Dr. Chakraborty attempted to discuss Employee's prior difficulties during the FY21 performance plan meeting, Employee remained defiant and responded in a completely disrespectful manner. This resulted in the 15-day suspension that is at issue in the instant case. Therefore, the 15-day suspension was certainly progressive; it was not the first time that Employee had been disciplined for engaging in insubordinate conduct towards Dr. Chakraborty. Moreover, Dr. Chakraborty had previously addressed what she considered to be insubordinate conduct by Employee, and Dr. Chakraborty's concerns were met with total disregard.²³

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* See also Agency's brief *supra*.

Citing to *Stokes v. District of Columbia*²⁴, Agency asserts that in assessing the appropriateness of the penalty, OEA is limited to ensuring that “[m]anagerial discretion has been legitimately invoked and properly exercised.” Accordingly, Agency outlined its reasons for choosing a 15-day suspension in both its Advanced Notice and its Final Decision. Agency explains that it analyzed each of the twelve (12) *Douglas* factors and concluded that a 15-day suspension was the most appropriate penalty based on Employee’s pattern of behavior that culminated in the underlying misconduct. Agency notes that the Strategic Planning and Analysis Department has been forced to redistribute work at times when Employee refused to complete assignments and Agency has also received various complaints from both team members and customers regarding Employee’s hostile behavior.²⁵

Agency avers that Employee’s hostile approach to Dr. Chakraborty during the November 5, 2020 meeting was blatant, but certainly not isolated and Employee’s intentional conduct reflected a deliberate choice to erode her working relationship with her supervisor. Further, Agency asserts that such erosion detrimentally impacts Employee’s ability to work productively within her department.²⁶ Agency maintains that it issued the 15-day suspension in order to demonstrate the seriousness of Employee’s behavior and deter future displays of unprofessionalism towards Employee’s supervisor and others so as to improve Employee’s performance. Agency contends that Employee has failed to show that an alternative sanction, such as the reprimand that she received previously, would have been effective. Agency concludes that, even if OEA disagrees with the penalty, it must defer to Agency’s judgment unless it believes Agency failed to weigh relevant factors or that the findings clearly exceed the limits of reasonableness.²⁷

Agency additionally notes that Employee has failed to establish a claim of disparate treatment. Citing to *Sheri Fox v. Metropolitan Police Department*²⁸, Agency argues that Employee cannot show that she and Mr. Pflaum, or any other employee for that matter, were both disciplined by the same supervisor for the same offense. Agency provides that, although Employee at times seems to suggest that Dr. Chakraborty was the person who issued the discipline in this matter, Dr. Chakraborty was only a witness and not the proposing official or the deciding official for the disciplinary action. Dr. Chakraborty did not take any part in the actual decision to suspend Employee for fifteen (15) days. Therefore, Agency concluded that Employee’s reference to the lack of disciplinary action taken against Mr. Pflaum for the January 2019 incident is misguided. Agency further contends that although Employee provided lists of Agency’s “administrative complaints or grievances” for FY19 and FY20, the lists do not include the nature of the underlying offense or the official who issued the penalty. Thus, the lists are immaterial for the purpose of conducting a disparate treatment claim analysis.²⁹

²⁴ 502 A.2d 1006, 1010 (D.C. 1985).

²⁵ Citing to Agency’s brief, *supra*, at Attachment 3.

²⁶ Agency’s Brief, *supra*.

²⁷ *Id.*

²⁸ OEA Matter No. 1601-0040-17 (Jan. 13, 2020).

²⁹ Agency’s Brief, *supra*.

1) Whether Agency had cause to discipline

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Further, the District Personnel Manual (“DPM”) regulates the manner in which agencies in the District of Columbia administer adverse and corrective actions. DPM § 1602.1 provides that disciplinary action against an employee may only be taken for cause. Agency terminated Employee for violating 6 DCMR § 1607.2(a)(16): Conduct Prejudicial to the District Government – [u]se of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay.

Whether Agency had cause to discipline Employee for Conduct Prejudicial to the District Government: use of abusive, offensive, *unprofessional*, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay (emphasis added).

Employee was charged with violating DCMR § 1607.2(a)(16). Specifically, Agency asserts that Employee acted in an unprofessional manner during the November 5, 2020 Team meeting with her supervisor. Agency further noted that the subsequent emails sent by Employee following the November 5, 2020, meeting were unprofessional. This charge is also based on Agency’s assertion that Employee exhibited unprofessional behavior by failing to connect her Microsoft Team audio during the November 4 and 5 2020, Microsoft Team meetings with Dr. Chakraborty.

Failure to connect to audio

Agency asserts that Employee failed to connect her Microsoft Teams’ audio during the November 4, 2020, Strategic Planning and Analysis meeting and during the November 5, 2020, FY2020 performance and FY2021 SMART Goals meeting with Dr. Chakraborty. Agency reiterated that Employee refused to turn on the audio on Microsoft Teams during the meeting, and she failed to provide a response as to why she refused to turn on her audio. Agency avers that, even if Employee had technical issues, she had from October 6, 2020, to November 4, 2020, to have the issue resolved. Agency maintains that, upon finding out that she had issues with her audio on November 4, 2020, Employee should have emailed or called the IT helpdesk to resolve the issue before the November 5, 2020, meeting.³⁰ Employee on the other hand explained in an email to Stewart-Ponder, dated November 5, 2020, at 10:07 a.m. that, “I was given a replacement laptop which has [t]he Microsoft Teams downloaded only on my remote desktop, I cannot connect to Microsoft Teams from my laptop. I have no reason to lie. See screenshots as proof.”³¹ Employee attached a screenshot of her attempt to connect to Microsoft Teams for her FY2020 performance review and FY2021 performance goal discussion, with the following message displayed on the screen “No Microphone. We didn’t find any microphone on your PC. Connect a mic so others can hear you.”³² Additionally, Employee notified Stewart-Ponder in an email on

³⁰ Agency’s Answer, *supra*.

³¹ Petition for Appeal, *supra*.

³² *Id.*

November 5, 2020, that she notified the IT team when she picked up her replacement laptop that she needed Microsoft Team. She also noted in the email that November 4, 2020, was the first time she logged into Microsoft Teams, and since the audio was not working, she typed in her responses.³³

Based on the record, I find that Agency has not met its burden of proof regarding this specification. Contrary to Agency's assertion, there is evidence in the record to support the fact that Employee did not deliberately refuse to turn on her audio during the November 4 and 5, 2020, meetings. Employee provided Agency with a screenshot from Microsoft Teams clearly stating that it could not find a microphone. Employee also informed Agency that she only found out about the issue with the audio on the day of the November 4, 2020, meeting. Moreover, Employee communicated via chat during the meeting and was participating. Accordingly, I find that Employee did not refuse to turn on the audio on her Microsoft Teams on November 4, and 5, 2020, as stated by Agency but rather, she was unable to turn on the audio due to technical reasons. Therefore, Employee's conduct was not unprofessional in this instance and Agency cannot rely on this specification to discipline Employee.

November 5, 2020 Performance Evaluation Meeting

Agency stated that Employee's conduct during the performance evaluation meeting with her supervisor, Dr. Chakraborty, was unprofessional. Specifically, when asked what she learned during the meeting, Employee stated that she learned nothing, and she only included it in the SMART Goal because her supervisor identified it as an area of improvement. Agency stated that it found this response concerning. I disagree with Agency's assertion in this instance. The undersigned listened to the audio recording of the November 5, 2020, meeting between Employee and Dr. Chakraborty. While Employee did inform her supervisor that she did not learn anything from the SMART goal and that she only included the SMART Goal because it was identified as an area of improvement, I do not find her response to be unprofessional. Employee was simply being candid with her supervisor, and I do not find her response to be unprofessional.³⁴

Agency also noted that, when offered the option of coaching to address performance deficiencies in Employee's customer service and job knowledge, Employee remained silent and did not accept the offer. Agency maintained that it found this conduct unprofessional.³⁵ With regard to this specification, I find Agency's argument to be two-faced. On one hand, Agency is attempting to discipline Employee for being sincere with her supervisor, yet, on the other hand, Agency seems to take issue with Employee remaining silent at some point during the meeting. Therefore, I find this argument unpersuasive. I further find that Employee's silence was not an indication that Employee did not accept Agency's offer for coaching during the November 5, 2020, meeting.

³³ *Id.*

³⁴ Agency's Answer, *supra*.

³⁵ *Id.*

Agency concluded that Employee's overall tone during the November 5, 2020, performance meeting with Dr. Chakraborty demonstrated a lack of professionalism.³⁶ I find that this specification must also fail. The November 5, 2020, performance meeting was between Dr. Chakraborty and Employee, and Dr. Chakraborty had an issue with Employee's tone in response to her questions. Employee admitted to raising her voice during the November 5, 2020, meeting. In reviewing the audio of the November 5, 2020, meeting, the undersigned found Dr. Chakraborty's tone to be condescending. In fact, Employee's tone was in response to some of the questions asked by Dr. Chakraborty. Moreover, the contentious history between Dr. Chakraborty and Employee is clear throughout the record. Exacerbating their relationship were complaints of Dr. Chakraborty's treatment of Employee's harassment complaint against another co-worker, whom Employee perceived to be a close friend of Dr. Chakraborty. Given the contentious history between Dr. Chakraborty and Employee, it is understandable that Employee became upset and raised her voice. However, I do not find Employee's overall tone during the November 5, 2020, meeting to be unprofessional nor prejudicial to the District government. As such, I find that Agency has failed to meet its burden that Employee's conduct at this meeting was prejudicial to the District government.

November 5, 2020 Emails

Agency stated that Employee's emails to Stewart-Ponder and Dr. Chakraborty after she abruptly disconnected the performance review call on November 5, 2020, were unprofessional. Agency made referenced to the 9:45 a.m. email wherein, Employee stated that "I am not obligated to use my personal phone to have a discussion or speak with you." Agency asserts that it was Employee's responsibility to be prepared for the November 5, 2020, meeting with Dr. Chakraborty.³⁷ Here, I find again that Agency appears to take issue with Employee's frankness. Absent any Agency policy or instructions requiring employees to utilize their personal devices for Agency-related calls, I find that Employee's statement in this instant does not rise to the level of unprofessionalism. The record is void of any such policies or practices. Moreover, Agency has not provided any evidence in support of its assertion that Employee was not prepared for the meeting with Dr. Chakraborty. However, there is evidence in the record to the contrary. Despite encountering technical difficulties with the Microsoft Teams application on her government issued laptop, Employee went the extra step to call into the performance meeting using her personal phone. Accordingly, I further find that Agency has not met its burden of proof with regard to this specification.

Additionally, Agency argued that Employee was unprofessional and disrespectful when she noted in the 9:45 a.m. email that "you seemed to be focused on my tone and not my FY21 performance goals, specifically how you have all these examples of how I disrespected (sic). The conversation is about the performance review which was scheduled for 30 minutes and exceeded the time limit."³⁸ Again, the undersigned finds that Agency seems to have an issue with Employee's level of candor. Dr. Chakraborty did mention Employee's tone during the Microsoft Teams performance review call and the call lasted for more than thirty (30) minutes. Consequently, I do not find that Employee's email rendition of the Microsoft Teams call was

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

disrespectful or unprofessional, especially given the contentious history between Employee and Dr. Chakraborty, as well as the fact that Dr. Chakraborty intimated that Employee hung up on her. Thus, I conclude that Agency has not met its burden of proof with regard to this specification.

Agency also noted that in Employee's 10:07 a.m. email to Stewart-Ponder and Dr. Chakraborty, Employee stated that she could not connect to Microsoft Teams from her laptop because it was only downloaded on her remote desktop. Agency explained that the screenshot provided by Employee showed that she was able to access Microsoft Teams, yet Employee failed to address her inability to utilize the audio on her laptop or remote computer. There is evidence in the record to prove that Microsoft Teams was unable to connect to the microphone on Employee's laptop. While Agency attempts to confuse the issue by stating that Employee had access to Microsoft Teams on her laptop, the fact remains that due to technical reasons, on November 5, 2020, Microsoft Teams could not find Employee's microphone and as such, it could not utilize the audio on her laptop or remote computer. Thus, I find that Agency has not met its burden of proof with regards to this specification.

Additionally, Agency argued that Employee's statement in the 10:07 a.m. email to Stewart-Ponder that "my performance Review is not a time when Reena can rehash what she deems as a disrespectful (sic) because of her evaluation of my tone" was inappropriate, disrespectful and unprofessional.³⁹ I disagree. While Employee might have been under the mistaken believe that certain topics were off the table for her performance review meeting, I do not find the above statement to be inappropriate, disrespectful, unprofessional and prejudicial to the District government.

Agency concluded that Employee's written response admitted that she was angry, and her anger translated as unprofessional, rude, disrespectful and not acceptable in the workplace. The undersigned disagrees with this assertion. On the contrary, the written response portrays Employee's frustration from the earlier Microsoft Teams performance review call with Dr. Chakraborty and they do not rise to the level of unprofessionalism. Consequently, I do not find Employee's statements in the above email to be unprofessional and prejudicial to the District government. As such, I find that Agency has failed to meet its burden that Employee's conduct at this meeting was prejudicial to the District government.

2) Whether the adverse action against Employee was in retaliation for her 2019 EEO complaint against another co-worker

Since the undersigned has concluded that Agency did not meet its burden of proof for the above-referenced cause of action, the undersigned will not address the issue of retaliation.

3) Whether Agency engaged in Disparate Treatment

Since the undersigned has concluded that Agency did not meet its burden of proof for the above-referenced cause of action, the issue of disparate treatment will not be addressed.

³⁹ *Id.*

4) *Whether the penalty of termination is appropriate under District law, regulations or the Table of Illustrative Actions*

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).⁴⁰ 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 Illustrative Actions; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. Here, because I find that Agency has not met its burden to establish cause for the adverse action in this matter under DPM §1607.2 (a)(16), I conclude that Agency cannot rely on this cause of action to discipline Employee. Accordingly, I further find that Agency's penalty of fifteen (15) days suspension is inappropriate.

ORDER

Based on the foregoing, it is hereby ORDERED that:

1. Agency's action of suspending Employee for fifteen (15) days without pay is **REVERSED**; and
2. Agency shall reimburse Employee all back-pay, and benefits lost as a result of her fifteen (15) days suspension; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*

MONICA DOHNJI, Esq.
Senior Administrative Judge

⁴⁰ 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).