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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE,)	OEA Matter No. 1601-0055-22
)	
v.)	Date of Issuance: May 22, 2023
)	
D.C. PUBLIC LIBRARY,)	JOSEPH E. LIM, Esq.
<u>Agency</u>)	Senior Administrative Judge
Employee, <i>Pro se</i>		
J. Kevin McIntyre, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on May 26, 2022, challenging the District of Columbia Public Library’s (“Agency” or “DCPL”) decision to terminate him from his position as a Special Police Armed,¹ Grade 6, effective April 26, 2022, for the following causes: (1) Negligence, (2) Conduct Prejudicial to the District Government, (3) and (4) False Statements. After OEA requested an answer on May 27, 2022, Agency filed its Answer on June 27, 2022.

Following a failed attempt at mediation on August 23, 2022, this matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on September 2, 2022. A Prehearing Conference was held on December 14, 2022, and an Evidentiary Hearing was held virtually on January 23, 2023. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether Agency had cause to take adverse action against Employee; and

¹ Based on Agency documents, this is Employee’s position title.

2. If so, whether the penalty of termination was warranted under the circumstances.

SUMMARY OF TESTIMONIAL AND DOCUMENTARY EVIDENCE

On January 23, 2022, a virtual Evidentiary Hearing was held via WebEx. The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as “Tr.”) which was generated following the conclusion of the proceeding. Both Agency and Employee presented documentary and testimonial evidence during the hearing to support their positions.

Sergeant Carla Wiley (“Wiley”) Tr. pgs. 11-76.

Wiley worked as an Administrative Sergeant for the DCPL. She handled all administrative issues and supervised the Office of Public Safety (“OPS”) officers, a Special Police Division within Agency. Wiley testified that Employee was one of the OPS officers. On November 16, 2021, Wiley received radio communication that Employee and Officer Daryl Williams (“Williams”) were involved in a physical altercation in the Digital Commons Area at the Martin Luther King, Jr. Memorial Library (“MLKL”) located at 901 G Street, NW, Washington, DC. Wiley testified that Employee and Williams responded to a call from a staff member who complained that there was a disturbance by library patron Darrell Prince (“Prince”) and two other patrons in the Digital Commons Area.

Once Wiley arrived on scene, she saw Employee and Williams. They had detained Prince. Wiley twice asked Employee what transpired; however, he did not provide a response. She then questioned Williams, who deferred to Employee. Because Wiley did not want to cause a scene, she brought Prince to the OPS suites for further investigation.

Her investigation revealed that at approximately 1:00 pm, Library Technician Pamela Thomas-Roots requested assistance from Public Safety because she heard "elevated voices" coming from the computer area. After Employee and Williams arrived, another staff member, April Owens (“Owens”) identified the three library patrons who were the source of the disturbance. Owens reported that a patron was eating, but that two other patrons interjected themselves into the conversation between her and the offending patron. Employee and Williams asked the patrons to leave the library.

Wiley then questioned Employee, who told her that a MLKL staff member had asked the third patron, later identified as Prince to leave for the day. Employee then proceeded to the area and asked Prince to leave due to his participation in the disturbance. However, as Prince gathered his belongings to walk towards the exit, Employee stated that Prince pushed him. Employee indicated that because Prince was uncooperative, he had subsequently detained, placed in handcuffs and escorted to the Office of Public Safety (OPS).

Wiley viewed the video surveillance of the incident. She explained that there were two black males, aged between 40 to 45 years of age in the left corner of the Digital Commons Area. Wiley could not recall what they wore but guessed that one male was between 5’8” and 6’0” in height and the other male was between 5’8” and 5’9” in height. Because the video did not have audio, it appeared to her that the two men were having a verbal dispute. She testified that she saw a staff member motioning the men to stop their disruptive behavior. Thereafter, the library police were called.

Subsequently in the video, Employee and Williams responded to the scene to speak to the staff member. She then viewed Employee and Williams speaking to two of the three male patrons who left the premises. However, Prince remained on the premises and slowly began to exit the library. She saw Prince sitting in the computer area and was approached by Employee. Wiley watched Prince put on his jacket, grab an item off the table, and proceed to exit the area. She stated that Employee walked behind him.

Next, Wiley saw Prince abruptly stop and turn to speak to Employee. Employee then took his hand and put it under Prince's arm and pushed him towards the exit. From Wiley's observation of the video, it appeared that Prince resisted based on his body language; however, Employee took Prince by the pants and then his shirt and forcefully slammed him to the ground. She saw Employee's attempt to turn Prince on his stomach, but Prince resisted. Williams assisted Employee and placed handcuffs on Prince to detain him.

After her review of the video, and speaking with Prince, Wiley determined that Prince had not assaulted Employee, and informed Prince that he was not under arrest. While Prince was not physically hurt, he requested reimbursement for his jacket that was torn due to the force from Employee. Wiley asked Prince to come back the following day to see how she would be able to replace the jacket; however, Prince never returned.

Wiley testified that she was informed of the altercation by the command staff. She stated that neither Employee nor Williams radioed that they had a physical altercation with patrons. Wiley also explained that Employee and Williams should have allowed Prince to leave since he appeared to be in compliance. Wiley stated that Employee's use of force was not appropriate pursuant to the Metropolitan Police Department ("MPD") General Orders, Use of Force policy. She explained that Employee was trained in proper use of force. Wiley stated that according to Agency Exhibit 7, "Members shall not use or threaten to use force for the following reasons: to force compliance with the member's request, unless the request is necessary to preserve member or public safety or criminal adjudication."

According to Wiley, Employee's verbal account of the incident was different than the written statement that he provided. For instance, Employee told Wiley that Prince pushed him, but that did not occur. After Wiley received Employee's statement, she turned it over to her managers, Captains Timmy Haynes and Doug Morenci for further investigation.

Wiley opined that if she arrived on scene and had a combative individual, she would have waited for assistance to handle the situation safely, she would not have handled the incident on her own, and therefore, would have less likelihood of a use of force incident because she would have assistance. To provide an example, Wiley recalled a time when she first joined Agency. She explained that she had to respond to an erratic male who experienced mental health issues and assaulted people. In that incident, Wiley was the only officer on scene. So she kept the immediate crowd back; and radioed for additional units to respond. Once the additional units were on scene, they assessed the situation to safely take the individual into custody—all without use of force conducted in detainment.

Wiley testified that she judged Employee's actions based on what she saw on the video. She explained that the video surveillance and the information that Employee provided to her were two different recounts. Because the video was not entered into evidence or submitted as an exhibit for this proceeding,

Wiley testified in detail what she witnessed to the undersigned. Wiley was unsure why the video surveillance was not submitted into evidence and stated that the video surveillance is recorded twenty-four hours a day, and the footage is kept between thirty and sixty days. She also stated that Agency had a copy of the video.

Alicia McNeal (“McNeal”) Tr. pgs. 77-93.

McNeal worked as an HR Specialist with Agency. She advised management on employee engagement and discipline. McNeal explained that the first step in the adverse action process involving an employee was to investigate the incident. She further explained that if it was determined that there is sufficient evidence to pursue an adverse action, the employee relations department would be contacted to draft an advance notice of adverse action, which could range from a suspension to a removal.

Tiffany Alston (“Alston”) Tr. pgs. 94-104.

Alston worked as the Chief of Public Services for Agency. She oversaw twenty-six library locations. Alston testified that she was the Deciding Official (“DO”) in Employee’s adverse action. As the DO, she reviewed the documents presented to her and the case to determine if Employee should be removed from service. Alston testified that she considered the *Douglas* factors, including Employee’s past disciplinary history when making her final decision of removal.

Employee Tr. pgs. 106-154.

Employee was a Special Police Officer with Agency for two and a half years. Prior to his stint with the Agency, he worked as a Special Police Officer at the Children’s National Medical Center. Overall, he had ten years of experience in law enforcement.

Employee testified that around noon on November 16, 2021, he responded to the Digital Commons Area, at MLKL. When Employee arrived on scene, he and Williams were met by Agency employee Owens. Owens informed them that there were three (3) patrons who were causing a disturbance and asked the patrons to leave. Two of the patrons, Orlando Hill, Jr. and Leonard Judan, complied and left the premises. However, the third patron, Prince was not as compliant and wanted documentation to validate the reasoning for Agency’s request to leave the library. Employee stated that he told Prince that he would be able to provide him with the documents pertaining to Agency’s behavioral policy if Prince met him at the front desk.

Once Employee arrived at the front desk, he looked back at Prince who did not appear to comply with the request to leave. Even after Employee’s verbal commands, Prince remained noncompliant, and Prince began saying that he was not leaving. Again, Employee reiterated that Prince would need to leave for the day. Employee noticed that Prince plugged his phone in one of the charging ports on the desks. At this time, Williams approached Employee and Prince. Once again, Employee explained to Prince that he had to leave. After giving him the instructions and directing him to the door, Employee testified that Prince snatched the Behavioral Guidelines Book that he had retrieved for Prince. Prince then called Owens a “racist” and a “fat bitch.” While Prince was not physically moving towards Owens, Employee did not want to give Prince the chance to potentially assault Owens. After Employee again asked Prince to leave, Prince stopped, turned, and stared at Employee intensely. Because of Prince’s aggressive demeanor,

Employee stated that he used one hand to grab Prince's right armpit to escort him out towards the front of the Digital Commons Area.

Employee testified that when Prince continued resisting, he detained Prince by taking him down to the ground and placing handcuffs on him. Prince resisted and went down on his back instead of on his stomach. Prince refused to obey Employee's command to turn on his stomach. Employee asked Williams, who was approximately five feet away, for his handcuffs since both of Employee's hands were on Prince. Williams assisted Employee with the handcuffs and they both escorted Prince to the Public Safety Office, located within MLKL.

Employee testified that he did not signal for Williams to assist him with Prince before he used force. Prince was ultimately detained for unlawful entry into Agency. Employee said his intention in detaining Prince was to ensure the safety of himself, William's, and everyone in the vicinity. Employee explained that the use of force policy provided that an officer cannot force compliance with a request unless it was necessary to preserve another person's safety. On November 18, 2021, he submitted his sworn report on the PD-119-two days after the incident occurred. Employee did not indicate in his report that he was preserving his safety.

Employee repeatedly testified that Prince did not comply when asked to leave the facility. He also testified that Prince did not make movements to assault him. Employee could not recall when Prince's jacket, a windbreaker with a small lining, was torn but believed it could have happened when Prince tried to walk in between two tables.

Employee repeated that it was necessary to handcuff Prince when he disobeyed and disregarded the requests for him to leave Agency. He reiterated that he deemed Prince as an unlawful entry patron. He admitted that he did not explain to Prince the meaning of the term unlawful entry, nor did he explain the consequences of unlawful entry to Prince.

Agency Exhibit 6 account of video encounter between Employee and Prince.²

In Employee's case, an Advance Written Notice of Removal was drafted by Doug Morency. The notice provided that Employee was charged with failure or refusal to follow instructions; conduct prejudicial to the Government; and false statements and records were issued for charges three and four. The penalty for the first charge was counseling to removal; the second charge was a fourteen-day suspension to removal; the third charge was reprimand to removal; and the fourth charge was a seven-day suspension to removal. For all four charges, Agency proposed a removal. Additionally, the *Douglas* factors were used to consider each of the charges against Employee.

In the Advance Written Notice of Proposed Removal to Employee, Office of Public Safety Director Douglas Morency wrote the following:³

[O]n Thursday, November 18, 2021, an investigation was launched in reference to the use of force by you against library patron, Darrell Prince. ...[u]pon review of the video

² Agency inexplicably did not present the video at the hearing. However, I find Agency witnesses' account of what was depicted in the video to be credible.

³ Agency Exhibit 6.

footage of the circumstances surrounding the altercation involving Mr. Prince, I observed the following:

You stood by Mr. Prince as he was preparing to leave. Mr. Prince stood up, put on his coat, then picked up a plastic bag, and started to leave. Mr. Prince started to exit then stopped abruptly. He then turned back to face you and at that point you pointed two times in a forward direction, motioning Mr. Prince to exit the library. Mr. Prince stood still in the same position and in the next moment you grabbed Mr. Prince under his right armpit with your left hand and began to aggressively push him in a forward direction. As you walked forward, you continued to push Mr. Prince while you were walking him towards the exit. After both of you passed one of the pillars, Mr. Prince was able to stop, turn, and face in your direction. At that point, you grabbed Mr. Prince by his shirt and waistband, and with force, you slammed Mr. Prince to the floor. On the floor, a struggle ensued. During the struggle, you attempted to roll Mr. Prince onto his stomach; Mr. Prince resisted and tried to stay on his back. While Mr. Prince was still lying face up, you stood up, grabbed Mr. Prince by his waistband, then yanked him in an upward motion to attempt to get him to lie down flat on his stomach. When that attempt failed, you grabbed Mr. Prince by his shirt and jacket and yanked him over towards you, until he was in a horizontal position. You struggled with Mr. Prince until Officer Williams was able to secure his handcuffs on him. After Mr. Prince was secured in handcuffs behind his back, you and Officer Williams stood Mr. Prince up, onto his feet. Officer Williams collected Mr. Prince's personal items, then you and Officer Williams escorted Mr. Prince out of the Digital Commons Computer Lab.

Outside of the Computer Lab, you were met by Sergeant Jurgen Chaney, Sergeant Carla Wiley, Officer Tyrone Davis, and Officer Derrick Cohen, who all responded to assist during this incident. The group of officers escorted Mr. Prince downstairs to the OPS suite located on room A level of the building. Upon arrival at the OPS Suite, you took Mr. Prince to the training room where he remained handcuffed. During this time, Prince did not have any visible injuries, nor did he report any injuries to any member of OPS. Sergeant Chaney, Officer Williams and Officer Davis stood by with Mr. Prince while Sergeant Wiley interviewed you about what led to you placing Mr. Prince in handcuffs.

You told Sergeant Wiley that when you were escorting Mr. Prince out, he turned and pushed against you. You also said that Mr. Prince became more resistant, and you took him into custody. As stated above, I reviewed the camera footage of this altercation, and observed that Mr. Prince was in fact walking to leave the Computer Lab. I did not observe any reason or cause or exigent circumstance that required you to push, touch or make him walk faster. When Mr. Prince turned to face your direction, you told Sergeant Wiley that he pushed against you. I did not observe or note any movement Mr. Prince made towards you to give you cause to take any defensive actions or take him to the ground. Your misrepresentation of the facts has compromised our confidence in your ability to perform the job.

In addition to a review of CCTV footage, I reviewed written statements provided by Sergeant Wiley, Officer Williams, and Officer Tyrone Davis. Further, during an interview with Sergeant Wiley, she noted that you asked, "is it bad" to which she replied "yes." Sergeant Wiley also stated that you advised her that Mr. Prince pushed against you. The video footage shows that Mr. Prince did not push against you. In an interview with Sergeant Wiley, Mr. Prince stated that his coat was torn, and he wanted to know how he would be reimbursed.

You knew or should have known that the level of force used is a violation of our policy and an unacceptable practice. Since joining the agency on or about November 12, 2019, we have provided and you have received numerous hours of training, including "Use of Force" in-service training conducted on January 19, 2021. Your actions are not reflective, consistent, or aligned with the policies of the DC Public Library.

Unfortunately, this is not the first matter where we have addressed your on-duty conduct. On October 13, 2021, you were engaged in horseplay with a library staff member which resulted in the member sustaining a lower back injury. You were verbally counseled with a follow-up email from Sergeant Wiley, wherein she advised you that your conduct was not consistent with the policies and practices of the DC Public Library or aligned with the training that you have received. You were also told that any further occurrences of your questionable behavior could result in disciplinary action.

Your conduct illustrates a lack of trustworthiness and integrity, and therefore warrants my proposal to remove you from employment with the DC Public Library. In deciding to propose termination, I considered each of the "Douglas Factors". (See Proposing Official's Rationale Worksheet.)

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Whether Agency's adverse action was taken for cause

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

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

Chapter 16, Section 1605.4 of the District Personnel Manual ("DPM") sets forth the definitions of cause for which disciplinary actions may be taken against Career Service employees of the District of

Columbia government. On April 24, 2022, Agency served Employee, a Special Police Armed, a Final Decision on the Advance Written Notice of Proposed Removal based on four (4) causes.⁴

Disciplinary Cause No. 1 District Personnel Manual (“DPM”) Section 1607.2(d)(1), Failure/Refusal to Follow Instructions: Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions.

Specification: Failure to follow the use of force continuum as outlined in the Use of Force directive as provided in the training that he received. Failure to follow the conduct and behavior guidelines provided by his supervisor in lieu of using physical force against Mr. Darrell Prince to remove him from the premises.

The penalty is counseling to removal for the first offense. The penalty recommended for this offense is Removal.

Disciplinary Cause No. 2. DPM Section 1607.2(a)(15), Conduct Prejudicial to the District: Assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property or while on duty.

Specification: Intentionally using physical force against Mr. Prince by repeatedly pushing him and slamming him to the floor without cause.

The penalty for a first occurrence is 14-Day Suspension to Removal. The penalty recommended for this offense is Removal.

Disciplinary Cause No. 3. DPM Section 1607.2(b)(2) Misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigation; and

Specification: Providing a written statement surrounding the Use of Force investigation and intentionally misrepresenting the statement of facts and circumstances that lead to the use of physical force against a library patron Darrell Prince.

The penalty for a first occurrence Reprimand to Removal The penalty recommended for this offense is Removal.

Disciplinary Cause No. 4. DPM Section 1607.2(b)(4), Knowingly and willfully reporting false or misleading material information or purposely omitting material facts, to any superior.

Specification: Providing a written statement surrounding the Use of Force investigation and intentionally misrepresenting the statement of facts and circumstances that lead to the use of physical force against library patron Darrell Prince.

⁴ Agency Exhibit 8.

The penalty for a first occurrence is 7-Day Suspension to Removal. The penalty recommended for this offense is Removal.

In Agency's first two causes listed above, it argues that Employee improperly applied the use of force against library patron Prince, in violation of Metropolitan Police General Order RAR 901.07 Use of Force ("GO 901.7").⁵ Agency's third and fourth causes against Employee further contends that Employee misrepresented what occurred in both his written and verbal account of what happened in an effort to justify the amount of force he utilized against Prince.

Metropolitan Police GO 901.07 governs when and how armed police officers are authorized to use force against civilians. The rules are intended to strike the delicate balance between public safety and the appropriate amount of force, including lethal force such as guns, to use in any confrontation. Police officer members are ordered to only use the amount of force that is appropriate to the circumstances. If de-escalation tactics are not effective or feasible, members may use an increasing level of force to overcome the level of resistance, so long as the force response remains proportionate to the perceived threat. The greater the threat and the more likely the threat will result in injury or death, the greater the level of force may be immediately necessary to overcome it. Some of the factors that members should consider when determining how much force to use include: 1) the risk of harm presented by the subject, 2) the risk of harm to the member or innocent subjects by using force, 3) the seriousness of the law enforcement objective, 4) whether further de-escalation techniques are feasible, including the time available to the member to decide, and whether additional time could be gained through tactical means, 5) mental or physical disability, medical condition, and other physical and mental characteristics, and 6) whether there are other exigent or emergency circumstances.

Members are trained in a range of force options. GO 901.07 recognizes that it is not possible to determine ahead of time the proportionate level of force for every possible situation. Nonetheless, it uses a "Use of Force Framework" to guide members when to use force and what level of force to employ in different situations. The Framework lists four categories of perceived threat and the appropriate force response to each of them. For the first category of the passive resister, the appropriate force response is a control hold. A passive resister is defined as a subject who displays a low level of noncompliant, passive resistance. The subject offers no physical or mechanical energy but simply does not respond to the member's lawful requests or commands and may be argumentative. The framework allows low-level physical tactics to gain control and cooperation (examples include soft empty hand controls,⁶ leaning on a subject's legs to hold them down, and firm grip).

For the second category of active resister, the appropriate force response are compliance techniques. An active resister is an uncooperative subject who will not comply with the member's requests or commands. Subject exhibits physical and mechanical defiance or behaves in such a way that causes the member to believe that subject may be armed with a weapon, uses evasive movements to defeat the member's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention not to be held in custody, provided that the intent to resist has been clearly manifested. For the active resister, compliance techniques that may induce pain or discomfort in a subject are allowed so long these do not generally cause an injury when used in accordance with department training and standards. Examples include

⁵ Agency Exhibit 7, March 23, 2022, AFGE Local 383's Written Response to the Advance Written Notice of Proposed Removal, Exhibit A (Standard Use of Force Model) and Exhibit B (DC MPD General Orders GO-RAR-901.07 Use of Force.

⁶ Empty hand control means the officer uses his hands without the aid of a weapon or tool to control the subject.

oleoresin capsicum spray, wrist locks, takedowns, armament systems and procedures (“ASP”) baton arm extractions, use of an ASP baton to conduct a wrist lock, and use of a patrol shield to pin a subject down.

For the third category of the ‘threatening assailant’, the appropriate force response is defensive tactics. A threatening assailant has gone beyond the level of simple non-cooperativeness, and is actively and aggressively assaulting (e.g., striking, kicking) the member, themselves, or others, or the threat of an aggressive assault is imminent. Subject has demonstrated a lack of concern for the member's safety; however, subject does not pose an imminent threat of death or serious bodily injury to member or others. For the threatening assailant, defensive tactics include all force options other than deadly force. Examples include strikes, ASP baton strikes, use of a police mountain bike as an impact weapon, electronic control devices, and 40mm extended impact weapons in accordance with department training and standards.

For the fourth and final category of the ‘active assailant’, the appropriate force response is deadly force. The active assailant poses an imminent danger of death or serious bodily injury to member or another person other than the subject himself or herself. The assailant’s actions demonstrate an intent to inflict imminent death or serious bodily injury upon member or another person. Deadly force means all force options, including the use of a firearm or a strike to the head with a hard object.

In this matter, the undisputed evidence showed that library patron Prince initially complied with Employee’s order to leave by putting on his coat, picking up his bag, and leaving in the direction of the exit. According to Employee, Prince had asked to see a written policy as to why he had to leave the premises. Only when Employee promised to provide this policy at the front desk did Prince begin, if grudgingly so, to leave the site. However, all the witnesses agree that a few steps from the exit, Prince abruptly turned back to face Employee. While a video of the incident showed both Prince’s and Employee’s actions, it had no audio. Agency’s witness, Wiley, had conceded that she did not know what was being said between Prince and Employee. According to Employee, Prince began to outrightly declare that he was not complying with the leave order. Agency’s account of what transpired in the video showed that Employee motioned twice for Prince to leave but Prince did not move. Employee’s version stated that Prince looked at him with an intense, aggressive stare and that Prince called the library staff employee who had reported him as a “racist, fat bitch.” At this point, Employee perceived Prince as a threat to both him and the staff employee. It was at that point that Employee believed he had the right to physically use one hand to grab Prince’s right armpit to escort him out. The two then proceeded towards the exit but after passing a pillar, the video showed that Prince abruptly stopped exiting and turned again to face Employee. It was at this point that both the video and Employee agreed that Employee grabbed Prince and pushed him to the ground and thereafter handcuffed him.

This is where Agency and Employee differ on the appropriateness of Employee’s actions. Agency witness Wiley argues that since Prince had initially appeared to comply with the order to leave, Employee should not have grabbed Prince’s arm to escort him off the premises. But Agency’s own account of what the video showed stated that Employee did not begin to grab Prince’s arm to push him towards the exit until Prince abruptly stopped exiting to turn towards Employee and indicated by his actions that he was not going to comply with Employee’s body language and verbal commands to leave even after Employee repeated his command. Agency further argues that Employee had no right even at that point to bodily grab Prince and force him to the ground for handcuffing in an effort to get him to comply.

Based on Agency’s Use of Force Framework, Prince fit the definition of a ‘passive resister’ when he became argumentative and then started to defy Employee’s repeated orders or requests to leave. The

Use of Force Framework authorizes Employee to use control holds such as his grabbing Prince's arm to escort him out. This action fits the definition of using soft empty hand controls. Based on this framework, I find that Employee was justified in grabbing Prince's arm using one hand to escort him out.

The only evidence presented as to what Prince said came from Employee. Employee's undisputed testimony is that Prince at this point defiantly and definitively declared that he was not leaving and yelled insults at an Agency staff librarian. Employee also stated that he got an aggressive, intense stare from Prince, making him believe Prince was becoming a possible potential threat to him and/or the staff member.

Based on Agency's Use of Force Framework, at this point, Prince fit the definition of an 'active resister' when he became uncooperative and declared he would not comply with Employee's requests or commands to leave the premises. While Prince never gave Employee any reason to believe he may be armed with a weapon, Prince did exhibit physical defiance, including "evasive movements to defeat member's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention not to be held in custody."⁷ Based on the evidence presented, I find that Prince became an active resister and I also find that based on Agency's Use of Force Framework, Employee was justified in using the compliance technique of a takedown and a wristlock such as handcuffs.

Agency's other charges against Employee are based on the premise that Employee lied about what happened during his November 16, 2021, encounter with Prince in both his written statement and verbal account to his superiors an attempt to justify his actions. It is undisputed that Prince had indicated that he was not physically hurt by the encounter and that his immediate concern after the incident was whether he would be reimbursed for his torn jacket.

Based on my reading of the statements, including that of Employee,⁸ Officer Daryl Williams⁹ and Sergeant Carla Wiley¹⁰, I find that they essentially comport with Employee's account. Because Employee was the one dealing with Prince during their encounter, I also find Employee to be more credible than Wiley as to what happened. I find that Employee perceived Prince's resistance to his attempts at control to be a push. Agency also failed to present Prince as a witness who could possibly contradict Employee's account. Since Agency has the burden of proof, I find by a preponderance of the evidence that Agency failed to meet its burden of proving that Employee lied about the encounter. I conclude that Agency failed to meet its burden of proving that Employee was guilty of all charges and specifications leveled by Agency.

If so, whether the penalty of termination was warranted under the circumstances.

Based on the foregoing and my finding that Agency failed to meet its burden of proof, I find that Employee's penalty was not warranted and must be reversed.

⁷ *Id.*

⁸ Agency Exhibit 5, Employee statement.

⁹ Agency Exhibit 3, Williams statement.

¹⁰ Agency Exhibit 4, Wiley statement.

ORDER

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

1. Agency's action of separating Employee is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the separation; and
4. 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/ Joseph Lim

Joseph E. Lim, Esq.
Senior Administrative Judge