THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0033-25
	)	
	)	Date of Issuance: November 18, 2025
v.	)	
	)	JOSEPH E. LIM, ESQ.
METROPOLITAN POLICE DEPARTMENT,	)	SENIOR ADMINISTRATIVE JUDGE
Agency	)	

Dan McCartin, Esq., Employee Representative
Daniel Thaler, Esq. Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee, a Police Sergeant, filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") on March 31, 2025, challenging the District of Columbia Metropolitan Police Department's ("Agency" or "MPD") decision to terminate him from service with an effective date of March 3, 2025, based on three (3) specifications of inefficiency. In response to OEA's April 1, 2025, letter, Agency filed its Answer on April 30, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on May 1, 2025.

Pursuant to the May 7, 2025, Order Convening a Telephone Prehearing Conference, the Conference was held on June 9, 2025. After the conference, I issued a Post Conference Order for legal briefs with an initial deadline of September 9, 2025. Based on the Agency's Consent Motion, I postponed the submission deadline to September 16, 2025. At the Prehearing Conference, I directed both parties to address the following issue: whether the Adverse Action Panel's ("AAP") decision was supported by substantial evidence, whether there was harmful procedural error, or whether Agency's decision was done in accordance with applicable laws and regulations. Because this matter is being reviewed under the analysis set forth in *Pinkard v. D.C. Metropolitan Police Department*[1], no Evidentiary Hearing was convened. The parties have submitted their legal briefs. After carefully reviewing the record, I have determined that no further proceedings are warranted. The record is now closed.

[1] 801 A.2d 86 (D.C. 2002).

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (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:
>
> 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 631.2 *id*. states:

> For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUES

Whether the Adverse Action Panel's ("AAP") decision was supported by substantial evidence, whether there was harmful procedural error, and whether Agency's action was done in accordance with applicable laws or regulations.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

This Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). In that case, the D.C. Court of Appeals overturned a decision of the D.C. Superior Court that held, *inter alia*, that this Office had the authority to conduct *de novo* evidentiary hearings in all matters before it. According to the D.C. Court of Appeals: "The OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The statute gives the OEA broad discretion to decide its procedures for handling such appeals and to conduct evidentiary hearings."[2]

In *Pinkard,* the Court held that this seemingly broad power of the OEA to establish its own appellate procedures is limited by the collective bargaining agreement in effect at the time of Pinkard's appeal. The relevant portion of the collective bargaining agreement reads as follows: [An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where

[2] *See* D.C. Code §§ 1-606.02 (a)(2), 1-606.03 (a), (c); 1-606.04 (1999), recodified as D.C. Code §§ 1-606.02 (a)(2), 1-606.03 (a), (c), 1-606.04 (2001); *see also* 6B DCMR § 625 (1999).

a Departmental hearing has been held, *any further appeal shall be based solely on the record established in the Departmental hearing.*[3]

The Court noted that the Comprehensive Merit Personnel Act ("CMPA") itself explicitly provides that systems for review of adverse actions set forth in a collective bargaining agreement must take precedence over standard OEA procedures. D.C. Code § 1-606.2 (b) (1999) (now § 1-606.02 (b) (2001)) states that "any performance rating, grievance, adverse action, or reduction-in-force review, which has been included within a collective bargaining agreement . . . *shall not be subject to the provisions of this subchapter*" (emphasis added). The subchapter to which this language refers, subchapter VI, contains the statutory provisions governing appellate proceedings before the OEA. *See* D.C. Code § 1-606.3 (1999) (now § 1-606.03 (2001)). Since section 1-606.2 (b) specifically provides that a collective bargaining agreement must take precedence over the provisions of subchapter VI, the Court held that the procedure outlined in the collective bargaining agreement -- namely, that any appeal to the OEA "shall be based solely on the record established in the [Adverse Action Panel] hearing"—controls in the Pinkard case.

Not only did *Pinkard* dictate that the OEA's review of the case be constrained to the record produced as a result of the hearing, but it also noted:

> The OEA may not substitute its judgment for that of an agency…. Its review of an agency decision—in this case, the decision of the [Adverse Action Panel] in the MPD's favor—*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, also must generally defer to the agency's credibility determinations….Mindful of these principles, we remand this case to the OEA to review once again the MPD's decision to terminate Pinkard, and we instruct the OEA, as the collective bargaining agreement requires, to *limit its review to the record made before the [Adverse Action Panel]*.[4]

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;
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> 2. The employee has been subjected to an adverse action;
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> 3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;

[3] *Pinkard*, 801 A.2d at 91 (emphasis in original).
[4] *Id.* at 90-92. (citations omitted).

> 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.

Based on the documents of record and the position of the parties as stated during the prehearing conference held on this matter, I find that all of the aforementioned criteria are met in the instant matter. Therefore, my review is limited to the issues set forth in the Issue section of this Initial Decision *supra*. Further, according to *Pinkard*, I must generally defer to [the Adverse Action Panel's] credibility determinations when making my decision. *Id.*

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

According to *Pinkard*, I must determine whether the Adverse Action Panel's findings were supported by substantial evidence. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[5] Further, "[i]f the Trial Board's] findings are supported by substantial evidence, [I] must accept them even if there is substantial evidence in the record to support contrary findings."[6]

After Employee challenged his termination, an Adverse Action Hearing Panel ("AAP") Hearing was held on December 18, 2024. Both Agency and Employee presented documentary and testimonial evidence during the course of the hearing to support their position. The AAP assessed witness testimony and other evidence regarding Employee's alleged misconduct and found Employee to be guilty of the charge.[7]

Following the Hearing, the AAP issued its Findings of Fact and Recommendation on January 16, 2025, unanimously finding Employee guilty and recommending termination for all specifications of the charge:[8]

Charge 1, Violation of General Order Series 120.21, Attachment A, #7, *"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."*

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[5] *Davis-Dodson v. D.C. Department of Employment Services*, 697 A.2d 1214, 1218 (D.C. 1997) (citing *Ferreira v. D.C. Department of Employment Services*, 667 A.2d 310, 312 (D.C. 1995).
[6] *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1159 (D.C. 1989).
[7] *See* AAP Findings of Fact and Recommendation ("AAP Findings") Agency's Response to Employee's Appeal ("AR") at Tab 5.
[8] *Id.*

Specification 1**:** Specifically, between June 7, 2021, and February 22, 2024, (Employee) has been in a less than full duty status for a total of nine hundred and thirty four (934) days.

Specification 2: Specifically, between November 14, 2022, and January 24, 2024, (Employee) has failed two (2) Fitness for Duty Evaluations.

Specification 3**:** (Employee) is currently assigned to the Fifth District as a Patrol Sergeant. However, (Employee) has been detailed to the Technical and Analytical Services Bureau (TASB) for approximately eighteen (18) months, strictly due to his continued inability to perform the full range of functions and duties of his assigned position.

The AAP's findings of fact underlying its decision noted that Employee did not dispute any of the three (3) specifications of his Inefficiency Charge. Consequently, after receiving these and other evidence produced at the hearing, the AAP found Employee guilty of all charges and specifications and recommended the penalty of termination after considering the Douglas Factors.

In arguing that there was substantial evidence found by the AAP, Agency asserts that Employee had admitted to the facts underlying his charges. With regards to the first specification, Employee did not dispute that he had been in a less than full duty status between June 7, 2021, and February 22, 2024. With regards to the second specification, Employee did not dispute that he failed two (2) Fitness for Duty Evaluations between November 14, 2022, and January 24, 2024. As for the third and final specification, Employee did not dispute that he had been detailed to the Technical and Analytical Services Bureau (TASB) instead of his assigned position as a patrol sergeant at the Fifth District for approximately eighteen (18) months, strictly due to his continued inability to perform the full range of functions and duties of his assigned position caused by his abuse of alcohol. Agency points out that Employee failed four (4) alcohol-metabolite screenings between November 14, 2022, and January 24, 2024.

Agency points out that the AAP's fact findings were made based on witness testimonies and other evidence produced at its evidentiary hearing. The AAP examined the *Douglas* factors[9] and determined the appropriate penalty to be the termination of his employment. On March 3, 2025, Police Chief Pamela Smith notified Employee that she had denied Employee's February 7, 2025, termination appeal and accepted the AAP's Findings of Fact and Recommendation.[10] Employee was removed from employment effective March 3, 2025.

In his brief, Employee does not deny his conduct. Instead, he believes his termination should be overturned because Agency violated its pledge not to use the results of his alcohol screening for disciplinary actions and he objected to Agency's use of medical providers and/or medical personnel to testify against him. Employee points out the steps he took to address his alcohol abuse disorder and other mitigating circumstances. Employee asserts Agency did not have substantial evidence to support the charges of Inefficiency as his conduct did not meet the definition of Inefficiency. Employee contends that his conduct of alcoholism is a disability and his inability to fulfill his Patrol Officer duties should not be considered Inefficiency. He contends

[9] *Douglas v. Veterans Affairs*, 5 MSPR 313 (1981).
[10] AR at Attachment 6.

that his being in a less than full duty status is not inefficiency as defined by General Order 120.21. Employee believes that his being able to perform work at the TASB,[11] although not as a Patrol Sergeant, belies the charge of Inefficiency. He believes that his alcoholism should not preclude him from continued employment with Agency. However, what Employee omits is that he was removed, not because he failed multiple alcohol screenings, but because his continued alcoholism rendered him unable to resume his patrol duties. Employee also debates the General Order's definition of Inefficiency, arguing that his limited duty status should not be considered Inefficiency.

General Order Series 120.21, Attachment A, #7 defines 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*. (Emphasis added.) Employee cherry picks the parts of the General Order 120.21 that favor him by pointing out that his superior officers did not complain about his work or his performance at the TASB. What Employee misses out on is that the position he was hired for is to perform the duties of a patrol officer, not a desk job. The fact that his alcoholism precludes his performance as a patrol sergeant is a neglect of duty as defined by the General Order. It is undisputed that Employee was guilty of all specifications stated in the Inefficiency charge. Because Employee does not and cannot deny the specifications of the Inefficiency charge, I find that there is substantial evidence to support the AAP's findings. Accordingly, I find that there is substantial evidence in the record to support Agency's "guilty" finding for all charges and specifications.

Whether there was harmful procedural error.

Agency asserts that it effectuated Employee's discipline wholly in adherence with applicable laws, regulations, policies and procedures. In his brief, Employee alleges that Agency's use of medical professionals to testify in his AAP hearing constitutes harmful procedural error because this violated his privacy and confidentiality rights under Health Insurance Portability and Accountability Act ("HIPAA") and the Americans with Disabilities Act ("ADA").[12] Agency rebuts this argument by pointing out that at the AAP hearing, Employee did not object to the admission of his medical records, that Employee had no privilege over Police and Fire Clinic ("PFC") treatments and records, and that Employee had signed all necessary waivers regarding disclosure of PFC medical records with Agency, especially with Employee's Fitness for Duty medical examination.

After a review of the record on this issue, I find no merit in Employee's protestations. In addition, Employee does not cite anything in the HIPAA or ADA that prohibits Agency from using its medical records in personnel matters, especially when Employee's alcoholism affects his ability to perform his work duties.

Whether Agency's action was done in accordance with applicable laws or regulations.

Agency reiterates that its disciplinary action against Employee was wholly in accordance with applicable policies and procedures. Agency adds that its chosen penalty of termination is

[11] He points to his good performance evaluation at the TASB. Record Tab 9, Exhibit 17.
[12] Employee Response to Agency Brief (August 15, 2025).

appropriate on the grounds that it was made after a thorough "*Douglas* factors" analysis[13] and is within the acceptable range of discipline under the District Personnel Regulations.

Employee contends that Agency failed to provide reasonable accommodation for Employee's alcoholism disability. He believes that Agency should forgive his alcoholism in proportion to his willingness to undergo treatment. Agency points out that it did not rely on Employee's pretreatment actions, only his post-treatment continued alcoholism, for his discipline. In addition, Agency states that even though Employee never cited any reasonable accommodation that would enable him to resume his patrol duties, Agency did provide him an accommodation when it assigned him to a desk job at the TASB. Nonetheless, there is no requirement for Agency to forgive Employee's inability to resume his regular patrol duties forever. Agency states that there is no reasonable accommodation that would enable Employee to fulfill vehicular and firearm duties while struggling with alcohol-use disorder.

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[13] In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-306 (1981), the Merit Systems Protection Board, 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, including whether the offense was intentional or technical or inadvertent, or was committed intentionally or maliciously or for gain, or was frequently repeated;
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> 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
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> 3) the employee's past disciplinary record;
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> 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
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> 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
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> 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
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> 7) consistency of the penalty with any applicable agency table of penalties;
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> 8) the notoriety of the offense or its impact upon the reputation of the agency;
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> 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;
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> 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.

Based on the applicable law and regulations in addition to the facts established in this matter by the AAP, I find Employee's arguments to be without merit. I find that Agency provided accommodation to Employee by assigning him to a desk job and excusing him from performing his patrol duties. However, I also find that Agency has no legal obligation to allow Employee to continue to skirt the work duties of his position of record.

Finally, Employee disagrees with each segment of Agency's *Douglas* factors analysis. It is uncontroverted that Agency considered the *Douglas* factors when determining Employee's penalty.[14] However, Employee counters by saying that Agency did not follow applicable laws or regulations when it incorrectly applied the *Douglas* factors analysis by failing to consider mitigating circumstances. Employee states that Agency mischaracterizes his actions when it labeled them as 'aggravating' when they should actually be deemed as 'mitigating.' Employee then provided several reasons for his argument. He indicated that if Agency had not performed such a perfunctory analysis of the *Douglas* factors, it would realize that a lesser penalty was appropriate.

The OEA may overturn the agency decision only if it finds that the agency "failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness."[15] "Not all of [the *Douglas*] factors will be pertinent in every case, and frequently in the individual case some of the pertinent factors will weigh in the [petitioner's] favor while others may not or may even constitute aggravating circumstances."[16] Although the OEA has "'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."[17] The "primary discretion" in selecting a penalty has been entrusted to agency management.[18]

> Selection of an appropriate penalty must ... involve a responsible balancing of the relevant factors in the individual case. The OEA's role in this process is not to insist that the balance be struck precisely where the OEA would choose to strike it if the OEA were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the OEA's review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the OEA finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the OEA then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.

[14] AR at Tab 7. AAP Findings and Recommendation.
[15] *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1985).
[16] *Douglas, supra*, 5 M.S.P.R. at 306.
[17] *Stokes*, 502 A.2d at 1011 (citing *Douglas*, 5 M.S.P.R. at 300).
[18] *Id*.

Id. (quoting *Douglas*, 5 M.S.P.R. at 300) (internal quotations marks and bracketing omitted).

The D.C. Superior Court noted that *Douglas* outlines the factors that must be considered but it does not require a certain level of consideration be devoted to each factor.[19] I find that Employee's objections to the AAP's *Douglas* factor analysis are simply disagreements with the AAP's evaluation of said factors in his case. There is no requirement that the Agency must conform its *Douglas* factor analysis to Employee's satisfaction.

I note that Employee does not deny that Agency weighed the *Douglas* factors in determining his penalty; rather, Employee disagrees with the way Agency weighed the *Douglas* factors. In Employee's view, Agency should have considered the factors in a way that wholly rebounds to his benefit, without regard to other considerations that reflect upon Agency's ability to achieve its mission. I therefore find Employee's objections does not indicate that Agency failed to follow the appropriate regulations and policies.

Any review by this Office of an agency decision of selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[20] Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."[21] When the charge is upheld, this Office has held that it will leave Agency's penalty "undisturbed" when "the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment."[22]

In this matter, the record shows that Agency's decision was based on a full and thorough consideration of the nature and seriousness of the offense, as well as any mitigating factors present. I find that Agency exercised its primary responsibility for managing and disciplining its workforce by electing to terminate Employee for his actions which demonstrated several instances of neglect of duty and insubordination. For the foregoing reasons, I conclude that Agency's decision to select removal as the appropriate penalty for Employee's infractions was not an abuse of discretion and should be upheld.

ORDER

It is hereby ORDERED that Agency's action of removing Employee from service is UPHELD.

FOR THE OFFICE: /*s/Joseph Lim, Esq.*
JOSEPH E. LIM, ESQ.
Senior Administrative Judge

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[19] *Eugene Goforth v. Office of Employee Appeals, et. al.,* Case No. 2020 CA 005084 (D.C. Super. Ct. July 9, 2021).
[20] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).
[21] *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).
[22] *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).