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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup>	)	
	)	OEA Matter No.: 1601-0036-23
v.	)	
	)	Date: January 29, 2026
METROPOLITAN	)	
POLICE DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Employee worked as a Legal Instruments Examiner with the Metropolitan Police Department (“Agency”). On November 15, 2022, Agency issued Employee a Fifteen-Day Advance Written Notice of Proposed Removal. The notice charged Employee with two counts of Conduct Prejudicial to the District Government and one count of Unethical or Improper Use of Official Authority or Credentials pursuant to Chapter 6-B, Sections 1607.2(a)(3), 1605.5(a), 1607.2(a)(5), and 1607.2(a)(9) of the D.C. Municipal Regulations (“DCMR”). The charges stemmed from Employee’s May 31, 2023, arrest in the District of Columbia on four counts of carrying a pistol without a license, possession of a large capacity ammunition feeding device, possession of an unregistered firearm, and unlawful possession

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

of ammunition.<sup>2</sup> A hearing officer subsequently conducted an administrative review of the charges and recommended Employee's removal. On March 6, 2023, Agency issued its Notice of Final Decision, terminating Employee from service effective March 6, 2023.<sup>3</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals on March 21, 2023. She argued that Agency's decision to terminate her was wrongful because the criminal charges were still pending before the Superior Court for the District of Columbia. As a result, Employee asked to be reinstated to her position of record.<sup>4</sup>

Agency filed its answer on March 29, 2023. It denied Employee's substantive arguments and alleged that her termination was taken for cause. Agency contended that the penalty of termination was appropriate in light of the *Douglas*<sup>5</sup> factors. It further opined that the termination action was taken in accordance with all laws, rules, and regulations. Therefore, Agency requested that Employee's removal be upheld.<sup>6</sup>

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<sup>2</sup> On July 17, 2022, Employee was observed parked in a 2017 Audi SUV with tinted windows which appeared to violate the District's tint law. See D.C. Code § 50-2207-02(h). According to Agency, after a traffic stop was initiated, Employee asked to call her Captain after a detective requested that she exit the vehicle. A large capacity, unregistered firearm and ammunition were retrieved during a search of the SUV.

<sup>3</sup> *Agency's Answer to Petition for Appeal* (March 29, 2023).

<sup>4</sup> *Petition for Appeal* (March 21, 2023).

<sup>5</sup> See *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters: 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; 3) the employee's past disciplinary record; 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties; 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses; 7) consistency of the penalty with any applicable agency table of penalties; 8) the notoriety of the offense or its impact upon the reputation of the agency; 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; 10) potential for the employee's rehabilitation; 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

<sup>6</sup> *Agency's Answer*, pp. 3-4.

On May 25, 2023, the OEA Administrative Judge (“AJ”) held a status conference to assess the parties’ arguments. The AJ subsequently ordered the parties to submit written briefs addressing whether Agency’s adverse action was taken for cause and whether the penalty of termination was appropriate.<sup>7</sup> However, on June 8, 2023, Agency filed a Motion to Stay Proceeding Pending Resolution of Employee’s Criminal Matter. According to Agency, the stay served to protect Employee’s due process rights before OEA because it could not use information from an open criminal case before an administrative adjudicatory body. The AJ granted Agency’s motion on June 30, 2023, and the matter was stayed until the criminal charges against Employee were dismissed in Superior Court on January 24, 2025.<sup>8</sup> The parties were again directed to submit briefs in support of their positions.<sup>9</sup>

In its brief, Agency contended that the termination action was taken for cause. It asserted that it was undisputed that Employee was arrested for crimes that were related to the performance of her duties; committed an act or omission constituting a criminal offense; and participated in off duty conduct which adversely affected Employee’s job performance, trustworthiness, and Agency’s mission. Additionally, Agency submitted that Employee attempted to use her official authority or credentials by requesting to call her Captain to potentially avoid arrest. Lastly, it reasoned that termination was appropriate based on the Table of Illustrative Actions and a thorough analysis of the *Douglas* factors. Consequently, Agency asked that Employee’s termination be upheld.<sup>10</sup>

In response, Employee alleged that her arrest was improper.<sup>11</sup> She averred that Agency’s termination action was taken prematurely because the criminal charges were ultimately dismissed. With respect to the charge of unethical or improper use of official authority or credentials, Employee

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<sup>7</sup> *Post-Status Conference Order* (May 24, 2023).

<sup>8</sup> *United States v. [Employee]*, Case No. 2022 CF2 004120 (D.C. Super Ct. January 24, 2025).

<sup>9</sup> *Second Post-Status/Prehearing Conference Order* (May 21, 2025).

<sup>10</sup> *Agency’s Brief* (June 9, 2025).

<sup>11</sup> This Board notes that Employee was not charged with any drug offenses related to her 2023 arrest.

argued that members of the Metropolitan Police Department were trained to disclose that they are affiliated with the Department when encountered by law enforcement. Thus, Employee opined that her termination was improper.<sup>12</sup>

The AJ issued an Initial Decision on September 5, 2025. First, she held that Agency established cause to discipline Employee for Conduct Prejudicial to the District Government (Charge No. 1) pursuant to 6-B DCMR § 1607.2(a)(3) because it was undisputed that Employee was arrested and indicted on four felonies that were directly related to Agency's mission and Employee's job duties. The AJ similarly held that Agency met its burden of proof with respect to Charge No. 2 because Employee was aware that firearms are required to be registered in the District of Columbia; there was an identifiable nexus between Employee's off-duty misconduct and her position with Agency; and Employee's misconduct adversely affected Agency's mission to safeguard the District, its residents, and visitors. As it related to Charge No. 3, she concluded that Agency lacked cause to discipline Employee for a violation of 6-B DCMR § 1607.2(a)(9). The AJ reasoned that the evidence failed to establish that Employee attempted to curry favor with the responding officer during the July 17, 2022, traffic stop; there was no indication that Employee would have avoided arrest had she been allowed to call her captain; and Employee was still arrested after officers located her civilian job identification. Therefore, she ruled that Agency could only discipline Employee for Charges Nos. 1 and 2.<sup>13</sup>

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<sup>12</sup> *Employee's Brief* (July 14, 2025). Agency filed a sur-reply brief on July 14, 2025. It maintained that the appeal should be dismissed because Employee admitted to having an unregistered firearm; Employee's misconduct was directly related to her job duties and Agency's mission; and she improperly attempted to use her connections to the Department to her advantage during the traffic stop. Agency clarified that Employee was not charged with any criminal offenses related to marijuana possession. It further claimed that Employee's criminal charges were not unfounded. Rather, it noted that the United States Attorney's Office requested dismissal of Employee's charges following the line-of-duty death of the investigator who recovered the firearm from the SUV. Finally, Agency reiterated that termination was the appropriate penalty based on the severity of Employee's conduct. Consequently, it requested that Employee's removal be upheld. *Agency's Sur-Reply Brief* (July 14, 2025).

<sup>13</sup> *Initial Decision* (September 5, 2025).

Concerning the penalty, the AJ held that a first-time violation of 6-B DCMR §1607.2(a)(3) under the Table of Illustrative Actions (“TIA”) was limited to placement on enforced leave pending criminal prosecution. As for Charge No. 2, she concluded that the maximum penalty for a first violation of 6-B DCMR § 1607.2(a)(5) was a thirty-day suspension. Because termination exceeded what was permissible under the Table of Illustrative Actions, the AJ reversed Employee’s termination; modified Charge No. 1 to impose Employee’s enforced leave from March 6, 2023, to January 27, 2025; and reduced the penalty for Charge No. 2 to a thirty-day suspension.<sup>14</sup>

Agency sought review of the Initial Decision with the OEA Board on October 7, 2025. It argues that the AJ erred by entirely failing to address its argument that Employee violated 6-B DCMR § 1605.5(a) as it relates to prejudicial conduct under Charge No. 1. Agency further submits that the AJ failed to address whether termination was the appropriate penalty under § 1605.5(a), which it suggests the evidence overwhelmingly supports. While it agrees with the AJ’s conclusion that Charge No. 2 is supported by cause, Agency disagrees with her conclusion that a thirty-day suspension was the maximum penalty that could be imposed. Finally, Agency opines that the AJ erroneously concluded that it failed to meet the burden of proof for Charge No. 3 because it was not required to prove that Employee would have received favor or avoided being arrested had she been allowed to call her captain. As a result, Agency asks the Board to grant its Petition for Review.<sup>15</sup>

### Substantial Evidence

In accordance with OEA Rule 637.4, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

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<sup>14</sup> *Id.*

<sup>15</sup> *Petition for Review* (October 7, 2025).

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal

Additionally, the D.C. Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987) found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.<sup>16</sup> As will be discussed herein, this Board does not believe that the record in its current state is sufficient to determine whether Employee's termination was proper because the AJ failed to address all material issues of law raised on appeal.

### Discussion

Agency argues that the AJ failed to address its argument regarding 6-B DCMR § 1605.5(a) as it relates to Charge No. 1. It notes that the AJ did not properly cite the Notice of Proposed Adverse Action, which relied on two separate DCMR provisions in support of this charge. Agency reasons that the Initial Decision did not address all issues raised on appeal because the decision is silent as to whether Employee was disciplined for cause pursuant to § 1605.5(a) and whether termination was a permissible penalty for this cause of action. Agency's November 15, 2022, Advance Notice of Proposed Action states the following in relation to Charge No. 1:

DC Personnel Regulation, Chapter 16, Section 1607.2(a)(3)

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<sup>16</sup> Black's Law Dictionary, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

Charge No. 1: Conduct Prejudicial to the District Government - (3)  
Indictment or charge of any felony or criminal offense that is related to  
the employee's duties or his or her agency's mission.

*Your conduct is also described under D.C. Personnel Regulations, Chapter 16, Section 1605.5(a), An employee of the Department of Correction, Department of Youth Rehabilitation Services, or Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:*

(a) The employee engages in any act or omission that constitutes a criminal offense. (*emphasis added*).

While the AJ ruled that Agency met its burden of proof for Charge No. 1 pursuant to 6-B DCMR § 1607.2(a)(3) for “indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission,” she made no specific findings in her analysis related to whether Agency established cause for a violation of § 1605.5(a). Similarly, the AJ failed to determine whether termination was the appropriate penalty for a violation of § 1605.5(a). We note that the Table of Illustrative Actions found in 6-B DCMR § 1607.2(a)(3) is silent as to the penalty for a violation of § 1605.5(a). However, Section 1607.2 of the regulations provides the following guidance as it relates to an agency's selection of a penalty:

The illustrative actions in the following table are not exhaustive and shall only be used as a guide to assist managers in determining the appropriate agency action. Balancing the totality of the relevant factors established in § 1606.2 can justify an action that deviates from the penalties outlined in the table.

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).<sup>17</sup> According to the Court in *Stokes*, OEA must

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<sup>17</sup> *Anthony Payne v. D.C. Metropolitan*, OEA Matter No. 1601-00540-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 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.*

decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency. Because the AJ failed to make findings related to 6-B DCMR § 1605.5(a), this Board cannot adequately determine if Initial Decision is based on substantial evidence. Therefore, this matter must be remanded to the AJ for additional fact-finding.

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*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).

**ORDER**

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**, in part. Therefore, this matter is **REMANDED** to the Administrative Judge for proceedings consistent with this order.

**FOR THE BOARD:**

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Pia Winston, Chair

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Arrington L. Dixon

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LaShon Adams

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Jeanne Moorehead

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.