THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	
Employee	)	OEA Matter No. 1601-0034-24
	)	
v.	)	Date of Issuance: June 17, 2025
	)	
D.C. FIRE AND EMERGENCY	)	
MEDICAL SERVICES DEPARTMENT,	)	Michelle R. Harris, Esq.
Agency	)	Senior Administrative Judge
	)	

Philip Andonian, Esq., Employee Representative
Connor Finch, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 27, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Fire and Emergency Medical Services' ("Agency" or "FEMS") decision to demote him from Technician to Firefighter/Paramedic. OEA issued a letter on February 27, 2024, requiring Agency to file an Answer to Employee's Petition for Appeal. Agency filed its Answer to Employee's Petition for Appeal on March 28, 2024. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on March 28, 2024. On April 2, 2024, I issued an Order Convening a Prehearing Conference in this matter for April 25, 2024. Prehearing statements were due by or before April 19, 2025. On April 6, 2024, Employee, by and through his representative, emailed the undersigned requesting additional information regarding the specifications for Prehearing Statements. On April 8, 2024, I issued a Supplemental Order Scheduling the Prehearing Conference, wherein the requested information was included. On April 18, 2024, Agency filed a Consent Motion to Extend the Deadline and Reschedule the Prehearing Conference. On April 19, 2024, I issued an Order granting Agency's Motion. That order rescheduled the Prehearing Conference to May 8, 2024. Prehearing Statements were now due on or before May 3, 2024.

On May 8, 2024, both parties appeared for the Prehearing Conference. During the Prehearing Conference, I determined that because there was a Fire Trial Board ("Trial Board") hearing in this matter, that OEA's review of this appeal was subject to the standard of review outlined in *Elton*

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

Pinkard v. D.C. Metropolitan Police Department, 801 A.2d 86 (D.C. 2002). As a result, the parties were ordered to submit briefs addressing: (1) whether the Trial Board's decision was supported by substantial evidence; (2) whether there was a harmful procedural error; and (3) whether Agency's action was done in accordance with all laws and/or regulations. Both parties complied with the deadlines set forth in that Order. The record is now closed.

JURISDICTION

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

ISSUES

1) Whether the Trial Board's decision was supported by substantial evidence;
2) Whether there was harmful procedural error;
3) Whether Agency's action was done in accordance with applicable laws or regulations.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

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.

STATEMENT OF THE CHARGES

According to Agency's Answer to Employee's Petition for Appeal at Tab 16, Employee's adverse action was predicated on the following charges and specifications, which are reprinted in pertinent part below:

Charge 1: Violation of D.C. Fire and Emergency Medical Department Order Book Article XVII (Driving Safety), § 2, which states:

2.16 Vehicles are not authorized to exceed the posted speed limit by more than 10 miles per hour (mph) when responding in any mode and under any conditions.

[2] OEA Rule § 699.1.

2.17 When vehicles must travel in oncoming traffic lanes, the maximum permissible speed shall be 20 mph.

2.17.1 Drivers should never proceed into the intersection until certain that every other driver sees the vehicle and is allowing it to proceed. Slowing when approaching the intersection, then coasting through, is not an acceptable substitute for coming to a complete stop.

Further Violation of D.C. Fire and Emergency Medical Department Order Book Article XVII (Driving Safety), §4.1. "The Driver shall be directly responsible for the safe and prudent operation of the vehicle under all conditions (NFP A 1451, 8.2.2)."

Further Violation of D.C. Fire and Emergency Medical Department Order Book Article XX (Apparatus, Tools, And Appliances), § 6, which states: "At no time shall any member of the Department drive, operate or place in position, or leave in any condition, any Department vehicle or equipment, so as to endanger life and/or property."

This misconduct is defined as cause in the D.C. Fire and Emergency Medical Services Department Order Book Article VII §2(f)(3), which states: "Any on duty or employment related-act or omission that interferes with the efficiency or integrity of government operations, to included Neglect of Duty." *See also* DPM § 1603.3(f)(3).

Specification 1: In his report dated (08/27/2022), Battalion Fire Chief Hames Gordon describes FF/Tech [Employee's] misconduct as follows:

1. Engine 19 was dispatched at 1155 to a house fire P1 due at 4229 Nash Street SE. While responding Engine 19 had a collision with a tour bus at approx. 1200. After review of the Rosco camera video footage from Engine 19, My findings are:
    a. Engine 19 was traveling 45 miles per hour in a 15 mile per hour speed limit zone.
    b. Engine 19 was traveling 57 miles per hour in a 25 mile per hour speed limit zone while going through an intersection while the light was red.
    c. Engine 19 was traveling 40 miles per hour while going through a red light intersection when it made contact with a charter bus.

2. No charges were filed against the member by MPD. Officer Gross badge #4388 was on the scene and assign CCN #22-122-007.
3. There were 6 injuries as a result of the accident.

Accordingly, I recommend terminating Firefighter/Technician [Employee's] appointment as a technician.

SUMMARY OF THE TESTIMONY

On March 6, 2023, Agency held a Fire Trial Board Hearing. During the hearing, testimony and evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as "Tr."), generated and reproduced as part of the Trial Board Hearing.

Agency's Case in Chief

Battalion Fire Chief Russell Smith ("Chief Smith") Tr. Pages 29 - 78

Chief Smith testified that he had been employed with Agency for 19 years at the time of the hearing. His current rank and assignment were Battalion Fire Chief and the Safety Officer for Battalion Number 3, and he had been serving in that capacity for a year and a half. Chief Smith affirmed that he was serving in that role on August 24, 2022. Chief Smith testified that on August 24, 2022, he responded to the intersection of Pennsylvania Avenue and Alabama Avenue in SE Washington DC, because he was listening to a box alarm dispatched in that area. He explained he heard the officer of Engine 32 announce on the box alarm that "Engine 19 got t-boned by a bus." Tr. 30. Chief Smith testified that he arrived at the scene about 10 minutes after receiving the notification. Chief Smith explained that upon arrival, he observed that Engine 19 was "sitting probably 100 feet east of the intersection on Alabama Avenue." He also noted there was a lot of "fire apparatus" around and that it was obvious that there had been a collision. Tr. 31. He also observed a tour/cargo bus in the intersection that was probably "westbound on Pennsylvania Avenue that also had significant front-end damage."

Chief Smith identified Agency's Exhibit 1 Pg. 60 as a picture of that scene. Tr. 32. Chief Smith testified that the intersection was completely shut down. Tr. 31. He also noted that there was "significant damage to the officer's side, pretty much the entire side of the engine." Tr. 33. He identified Agency's Exhibit 1 Pg.67 as the photo of the damage to Engine 19 that day. Tr. 34. Chief Smith explained that the most significant damage was to the "pump panel" and that "it's very difficult to determine the cost of repair and it's a very specialized field of work." Tr. 34. Chief Smith further testified that at the last he heard "that the estimate has not been completed because they had to get the engine towed to the manufacture to do the estimate." Tr. 35. Chief Smith said that the manufacturer (Fleet) indicated the repair costs would likely be "well into six figures." Tr. 35. Chief Smith also identified Agency's Exhibit 1 Pg 97, as a photo of the other vehicle involved in the collision.

Chief Smith testified that [Employee] was operating Engine 19 at the time of the collision and that there was a total of five (5) including the driver present. Chief Smith explained that due to

the number of people injured and the hospitals they were dispatched to, he was unable to get to the hospitals to ascertain the specific injuries. Tr. 40. He further noted that the injured employees went to the hospitals and then were discharged to the police and fire clinic, and those medical records are confidential. Tr. 40. Chief Smith stated that only the driver of the bus (the other vehicle) was present. Chief Smith also indicated that he knew the bus driver had been transported to the hospital, but did not know the nature of the injuries. Tr. 41. Chief Smith identified Agency's Exhibit 5 Page 123 as the Tort liability form which indicated that the loss was on August 24, 2022. Tr. 43-44. It also showed that the location was southeast Alabama Avenue. Chief Smith also read that the document indicated that the bus driver had sustained/experienced back, neck and hand pain, as well as post-traumatic stress. Tr. 45.

Chief Smith explained that his role was as safety officer and in this capacity, it was his duty to assist the investigation battalion chief. Chief Smith said that he took photos of the scene and downloaded and played camera footage. He further noted that he took and reviewed video footage while he was on scene. Tr. 46. Chief Smith also identified Agency's Exhibit 6 (video) as the posted speed limit of 25 miles per hour. Chief Smith also testified that [Employee] was traveling at 39 miles per hour per the playback at the bottom of the screen. Tr. 47-48. In another portion of the same video, he identified that the speed limit was 15 miles per hour, and that Employee was operating at 41 miles per hour and in another instance that Employee was operating at 45 miles per hour. Tr. 49. Chief Smith continued to review the playback in Agency's Exhibit 6. Chief Smith cited that it did not appear that Employee made eye contact with all the other vehicles on the road before proceeding through the intersection based on his review. Tr. 51.

Chief Smith also identified that at one point in the video playback of Exhibit 6 that he observed the occupants were not "belted so you could see them actually come dislodged from their seats in the back." Tr. 53-54. Chief Smith testified that based upon his knowledge of Article 17 of the Order Book and his review of the videos etc., that Employee committed violations. Tr. 54. Chief Smith described that drivers are supposed to ensure that occupants are belted anytime the vehicle is driven. He also noted that drivers must stop at any red light and control the intersection before proceeding through it. Tr. 54-55. Chief Smith further testified that it is not allowed to exceed the posted speed limit while responding to an emergency by more than 10 miles per hour and that Employee operated the vehicle more than 10 miles per hour over the posted limits at the time of the incident. Tr. 55. Chief Smith further explained that technicians are supposed to be familiar with the safety rules. Tr. 55. Chief Smith also explained the process to become a technician and noted it was a position that many sought in working with Agency.

Chief Smith testified that he did not complete the "VDR" summary report, but that it comes from an electronic control module of the apparatus. He indicated that he was familiar with the report for this incident. Tr. 58-59. Chief Smith explained that the VDR stands for the "Digital Video Reporter" and its "basically the internal computer of the engine records basically everything that is going on. Tr. 58-59. Chief Smith said that this device can record by seconds, perhaps even milliseconds, every possible thing that's going on with that vehicle. Tr. 59. He noted it can record "how much percentage of throttle is being applied, whether the anti-lock brake system has been activated due to hard braking, how many RPMS the motor is currently going" and more. Tr. 59. Chief Smith also identified Agency's Exhibit 2 as the Vehicle Date Report. He noted that the date was August 24, 2022. Further, he indicated that at 11:58 am, the speed was listed for 54 miles per hour and at 11:59pm the speed indicated 59 miles per hour. Chief Smith noted that while that was not consistent with his review, it was "pretty close" Tr. 62. He also indicated that the throttle showed

100 percent which means "the throttle is fully utilized, that the accelerator is all the way to the floor." Tr. 63. He also stated that at 11:58am, that all four seat positions had persons without seatbelts. Chief Smith also cited that there were civilians at the scene who were standing around and pointing. There were also local television cameras present. Tr. 63.

Chief Smith testified that aside from taking the photos and downloading videos, he did not have any further involvement in the investigation or discipline in this matter. Tr. 64. Chief Smith further testified that he was aware of the proposed discipline in this matter and cited that it was a demotion from technician to firefighter. Tr. 64. Chief Smith explained that he agreed with this discipline because it was based on the speeds involved and the fact that the driver had recently been promoted to that position. Additionally, Smith cited that he did not think retraining would have helped and that the reduction in rank would help the driver see the gravity of the situation. Tr. 65. Chief Smith cited that he believed that Employee had been promoted approximately a little less than a month before the incident. Tr. 66.

On cross examination, Chief Smith reiterated that he took a lot of pictures from the scene that day. He also cited that the weather conditions were clear that day. He also affirmed that Agency's Exhibit 2 showed the speed of the engine as reflected in the VDR report. Tr. 68. He noted that Exhibit 2 shows the "maximum speeds that the apparatus reached within each minute of the time represented." Chief Smith cited that he was not able to ascertain whether this represented the average speed over the course of a minute. He said the speeds for the throttle were also represented at the maximum of the minute. When asked whether the "engine could have been traveling the listed speed for just one second of the minute," Chief Smith explained that he was not sure according to the VDR and that he was not an expert in a way to explain averages. Tr. 69-70. When questioned whether the location of the incident on Alabama Avenue was near a school, Chief Smith affirmed that it was. When asked whether the 15 mile per hour speed only applied during school hours he affirmed that was true. He also affirmed that school was not in session at the time of the accident. Tr. 70. Chief Smith affirmed that cameras record whenever the ignition is on in the engine and that the Department can view footage from those cameras from each of those engines, but they do not review footage unless there is an incident. Tr. 71. Chief Smith cited that there is no policy for reviewing technicians' speed in a matter of course, nor does the Department regularly inform technicians that they failed to stop at a red light, or that they had exceeded the speed limit by more than 10 miles per hour. Tr. 71-72.

Chief Smith also testified that he did not have any personal knowledge of the bus driver's claim for monetary damages. Tr. 72. He cited when those types of claims come in, it comes through the DC Office of Risk Management and is then forwarded to the general counsel. Chief Smith cited that the bus driver's claims did not include proof of his claimed injuries. Tr. 72. Chief Smith noted that at the scene, the bus driver was ambulatory and walking around. He did not know if the bus driver had provided any medical records nor if it included proof of loss of earnings. Tr. 72.

On redirect examination, Chief Smith testified that when school is not in session within the zone, that he believed it would revert to a speed limit of 25 miles per hour. Tr. 74. He also noted that Engine 19 was traveling in excess of 10mph in the 25mph zone. Chief Smith testified that the speeds are accurate and derived from gps. He did not have any reason to believe that any of those devices were faulty on August 24, 2022, the day of the incident. Tr. 75. He reiterated that the weather conditions were clear that day. When asked whether Employee was allowed to travel at speeds of 59 or 58 miles per hour, Chief Smith answered "no." Tr. 76. Chief Smith also noted that he did not

speak to the bus driver at the scene, nor spoke with him about any pain or injuries. Chief Smith cited that in his capacity as safety officer, his focus is internal safety and internal injuries with Department employees and other EMS providers on the scene. Tr. 77. When questioned by the panel members as to whether there was any data from the bus, Chief Smith testified that the bus was equipped with a camera, but they didn't attempt to get it, and nothing had been received from the bus company. Tr. 78.

Chief James Gordon ("Chief Gordon") Tr. 80 –122

Chief Gordon testified that he was the Battalion Fire Chief assigned to the Third Battalion and he had been with the Department for over 26 years. At the time of the hearing, he had been serving in the Battalion Fire Chief role for a little over a year. Tr. 80. He affirmed that he was working in this capacity on August 24, 2022. Chief Gordon testified that he recalled receiving a call for a house fire at 4229 Nash Street SE that day. He did not recall the exact time of day but affirmed that he responded to that fire. Tr. 80. He further cited that the Third Battalion, Engine 19, Engine 32 and Truck 15 were other units and confirmed that Engine 19 was a part of this assignment. Chief Gordon explained that while in route, Engine 32 came on the radio and said it witnessed Engine 19 in an accident and removed them from the box. Chief Gordon stated that he removed them from the box and called the Second Battalion to replace him. Tr. 82. Chief Gordon affirmed that he stopped at the location of the accident and that it was at the intersection of Pennsylvania and Alabama Avenues Southeast. Tr. 83.

Upon arrival, Chief Gordon said the scene was "chaos." Tr. 83. The fire truck had collied with a bus and members were trying to assess the scene. Once he arrived, Chief Gordon said he established command and took over the scene and called for additional resources. He said that he spoke with Captain McCallister, who was the person who called it in from Engine 32. Tr. 84. Chief Gordon said that he learned that Engine 19 had five (5) members present.. During the investigation on the scene, Chief Gordon learned that Employee was operating Engine 19. Tr. 85. Chief Gordon cited that there was a lot of debris around the area. Tr. 86. He identified Agency's Exhibit 3 page 89 as the photo of Engine 19 accident. Tr. 97. He also identified it on page 67 of that same exhibit. Tr. 88. He also identified page 97 of this exhibit as the charter bus involved in the accident. Tr. 89.

Chief Gordon testified that an investigation began at the scene. He was the responding battalion chief and the investigating chief. TR. 90. He was assisted by the safety officer Chief Russell Smith. Tr. 90-91. He cited that photos were taken and that they reviewed the video from the Roscoe camera footage apparatus. Tr. 91. He cited that there are two ways to review it, either from the SD card from the fire truck or live from the cloud. He was not sure how Chief Smith got it, as they were viewing Smith's laptop. Tr. 91. Chief Gordon affirmed that he reviewed the video while on scene. Tr. 91. He recalled that there were two (2) different camera angles, one looking out at the windshield of the driver's side and another looking inside the cab at the members. Tr. 92. Chief Gordon identified Agency's Exhibit 6 Video 1 as the video from Engine 19. Tr. 93. The date and time were August 24, 2022, and the time was 11:58. He said that the speed was in the corner and popped up when it was moving.

Chief Gordon further testified that in viewing the video several things "stuck out". First, he cited the speed of the fire truck and then there were two or more instances when the truck went through a red light. Tr. 94. Additionally, Gordon cited that there was a flashing 15 miles per hour speed limit and the truck was going well above that. Tr. 95. Chief Gordon noted that in going through

the second red light, that was when it collided with the charter bus. He cited that the collision occurred just behind the lineman which is the officer's side just behind the door by the pump panel, which was the passenger side of the truck. Tr. 95-96. After reviewing the video, Chief Gordon testified that he ordered special reports from everyone on Engine 19 and ordered a report from the officer on Engine 32, since they called it in. Tr. 96.

Chief Gordon affirmed that he was familiar with Article 17 of the Order Book and noted that upon review of the video that Employee had incurred violations. He cited that Employee violated the speed limit rules. He explained that they are not supposed to exceed the speed limit by more than 10 miles per hour. Tr. 97. He also noted that he cited Employee for running the red light, because even with lights and sirens, they're supposed to stop and make sure the intersection is cleared and then proceed, which did not happen in this instance. Tr. 97. Chief Gordon testified that Employee should have been familiar with Article 17.

Chief Gordon identified Agency's Exhibit 1 page 35, as the report he submitted. Chief Gordon noted that the report indicated that Engine 19 was traveling at 45mph in a 15mph zone. The report also reflected that Engine 19 was traveling at a speed of 57mph in a 25mph zone while going through an intersection while the light was red. Tr. 98. Additionally, the report cited that Engine 19 was traveling at 40mph in a 25mph zone while going through a red-light intersection when it collided with the charter bus. Tr. 99. Chief Gordon read the sections which noted that driver should never proceed into an interaction until they are certain that every other driver sees the vehicle and is allowing it to proceed. Tr. 99. He also read that the general orders indicate that the driver should also attempt to make eye contact with the other driver to ensure they know the vehicle is there. Further, the order states that vehicles are not authorized to exceed the posted speed limit by more than 10 miles per hour when responding in any mode and under any conditions. Tr. 101.

Chief Gordon testified that in his review of the vehicle, Employee did not come to a complete stop before proceeding through the red light. He also noted that Employee did not make eye contact with other drivers, and he failed to remain within 10 miles per hour of the posted speed limit. Tr. 101-102. Chief Gordon identified Agency Exhibit 1 page 38 as the special report from Marco Toriano, the lieutenant in charge of the engine at the time of the accident. Toriano was on the passenger side. Chief Gordon indicated that there was a delay in receiving the reports from the members because they were all injured and on sick leave. Tr. 103. Gordon identified Agency Exhibit 1 page 39 as Employee's special report and page 41 as Firefighter Black's special report. After review, he noted Firefighter Black indicated that he was on the officer's side of the engine, behind the officer. Chief Gordon further identified Agency Exhibit 1 page 52 as Firefighter Ruffin's special report. Tr. 104-105. He recalled Ruffin was behind the driver. He also identified Agency Exhibit 1 page 43 as the report from Captain McAllister who oversaw Engine 32 and was not directly involved in the accident. He also identified page 44 of the same exhibit as the report from Technician Jones who was the driver of Engine 32. Tr. 106.

Chief Gordon further testified that upon his review, he concluded that Employee was unsafe to drive an apparatus, he was speeding past the posted speed and that he didn't stop at red lights. Tr. 106-107. Chief Gordon explained that following the submission of his memorandum and the special reports he collected, he had no further involvement in the disciplinary action. Tr. 107. He further noted that after receiving the packets of exhibits he saw the proposed discipline, but prior to that he did not know. Tr. 107-108. Chief Gordon testified that the proposed discipline was for Employee to be removed from being a technician and not provide him the opportunity to test again for one year.

He agreed with that proposed discipline because there is a lot of responsibility in driving an apparatus and that at the time, Employee didn't demonstrate that he had a level of maturity and that he could use some time to reflect. Tr. 108.

On cross examination, Chief Gordon reiterated that he was at the scene of the accident and noted that the weather was clear. He further indicated that if there had been weather conditions involved, he would have put them in his report. Tr. 109. He also affirmed that the road conditions were good. Chief Gordon testified that he had not reviewed the police report. He identified Employee's Exhibit 4 at page 14 as a fair and accurate representation of where the bus struck the engine. Tr. 110. When asked whether the bus driver was given a ticket for failing to yield to an emergency vehicle, Gordon stated "that's what I heard." Tr. 111. Chief Gordon stated that six (6) people were transported to the hospital with injuries, but that there were no critical injuries.

Chief Gordon also affirmed that during his investigation, he learned that the electric siren on Engine 19 was out of service on August 24, 2022. Tr. 112. He also affirmed that it had been reported August 10, 2022, but had not been repaired by August 24, 2022. Tr. 122. Chief Gordon reviewed Employee's Exhibit 12 and affirmed it was an email dated September 17, 2022, from Captain Papariello where he indicated that Engine 19 reported to the Fleet shop on the date indicated. Tr. 114. He agreed that Captain Papariello wrote in that email that the wrong siren had been given to Engine 19 and wrote that Engine 19 went back to the radio shop but was closed for the day. Tr. 111-115. He also affirmed that Captain Papariello's email indicated this occurred on August 23, 2022. Tr. 115.

Chief Gordon further testified that he investigated others for discipline and cited that Lieutenant Toriano should have been disciplined. Chief Gordon responded that he did not know what discipline Lieutenant Toriano had received when asked whether Toriano had received a suspension. Tr. 116. On redirect examination, Chief Gordon testified that the bus driver's citation for failing to yield did not have any bearing on his findings, as they were based on what he observed that day. He further explained that he has no idea what the police officer was thinking or his reasoning, but that his report was based on what he witnessed with the speed and not stopping at the stoplight. Tr. 117. Chief Gordon testified that he believed the collision could have been avoided if Employee had adhered to Agency's rules. Tr. 118. Chief Gordon said he did briefly see the tour bus approaching from the right side but that it happened fast. He noted that you can see in the video the officer saw it coming because he had a look of panic on his face. Tr. 118. Chief Gordon also testified that Engine 19 was equipped with other sirens, specifically a Federal-Q. He cited that if the electric siren was out of service, the Federal-Q would be activated and that there is no significant difference as they are both loud. He also noted that the Federal Q was activated at the time of the accident. Tr. 119. Chief Gordon further testified that Lieutenant Toriano's actions do not negate Employee's, as both had responsibilities for the safe driving of the apparatus. Tr. 120. Chief Gordon further noted that Article 17 does not have any exception for not stopping at a red light, exceeding the speed limit by more than 10 miles per hour, or for not trying to make eye contact before proceeding through red light. Tr. 120.

Chief Gordon said that in his 27 years with the Agency, that the only other incident he saw that was this bad was when Engine 3 got into an accident. He explained that there are incidents that occur, but most are minor in nature. Tr. 121.

Employee's Case In Chief

Employee Tr. Pp. 126 – 182

Employee testified that he was assigned at Engine 19 Number 3 Platoon and was currently ranked as a Firefighter Technician Paramedic. He began his tenure with Agency on Marcy 19, 2021 and became a Technician on July 31, 2022. Following the academy, his first assignment was Engine 32, where he worked for about three (3) years. Tr. 126. He was assigned to Engine 19 on July 31, 2022. Employee also explained that he had about 14 years' experience as a firefighter, first with a volunteer fire department and then with the City of Alexandria. He became a paramedic in 2017. Tr. 127. He also explained that he spends numerous hours taking online and in-person courses to maintain his credentials. Tr. 128. Employee stated that he was excited to work for Agency and that over the last five years he had tried to set a good example. Tr. 129.

During his time as a volunteer firefighter, he occasionally drove emergency vehicles for several hours and shifts, mostly ambulances. Tr. 129. Employee identified Employee Exhibit 2 as his certification from Prince William County which he received in August 2012. Tr. 131. He testified that he was not involved in any accidents during his time with Prince William County. He also drove vehicles for several hours/shifts while working with the City of Alexandria and was never involved in any accidents. Tr. 132. Employee identified Employee Exhibit 3 as his Form 140s to drive ambulances and fire trucks in non-emergency that he received with Agency, where he qualified in September 2020 to drive. He also noted that this qualification included five (5) or six (6) months practice drives and training Tr. 133. He explained that Captain McAllister was the officer who was mainly with him during this time. He also cited that between 2020 and 2022 when he was promoted to technician that he probably drove about 12 times a day during a 24-hour shift. Tr. 134. In preparation for the technician role, he observed the driver of Engine 32 and did other observations and practices. He cited that the driver of Engine 32 drove very fast. Tr. 135. Employee further cited that the driver of Engine 32 would sometimes go through red lights and stop signs, went on the wrong side of the road and exceeded speed limits, but that he never felt unsafe with him. Tr. 135. Employee also testified that he passed the technician test on the first try.

Employee further testified that since becoming a technician, he drove every day, 24-hour shifts. His responsibilities included ensuring members arrived safely to scenes, conducting training drills and making sure everyone had what they needed. Tr. 136. Employee also explained that depending on the shift, he may do 10 -25 runs in a day, and that there might be six (6) or seven (7) dispatch calls for fires a day. Tr. 136-137. Employee explained that his top priority when driving is getting safely to the scene. Tr. 137

Employee testified that on August 24, 2022, he was driving Engine 19 in response to a box alarm. He arrived at work that day at around 4:30am. Tr. 138. He cited that he inspected the engine that morning and discovered that the electric siren was not working, and the driver's side window was not operable, so he notified his officer. Tr. 138. He said that they both noted it had been out of service for one to two weeks, but both concluded it was safe to drive. Tr. 139. He also explained that there are some differences between the electric siren and the air siren, in that the air siren is manual foot pedal, whereas the electric siren just requires a push of the button. Tr. 139. This was not the first time he drove without an electric siren. He also testified that around 11:45am or so, they received a box alarm call to a residence on Nash Street SE. He explained that when they received the call they

were on Good Hope Road facing westbound and after the alarm, he changed routes back taking a left on Naylor and a left on Alabama avenue to continue northbound. Tr.1 40.

Employee affirmed that emergency lights were on and that the air siren was on. The weather was clear and sunny, and the road conditions were favorable that day as well. Tr. 150. Employee testified that the accident happened at the intersection of Pennsylvania Avenue and Alabama Avenue SE. He explained that on Alabama Avenue there are two lanes on either side and on Pennsylvania there are two lanes forward and then a turn lane for the right side. He was traveling uphill, which required him to keep his foot on the accelerator to maintain speed. He said as he approached the intersection, all the cars were stopped. He further explained that in proceeding through the intersection, he took his foot off the accelerator to slow down and then visualized all the cars at the intersection. Tr. 142. Employee testified that he did stop at the intersection because he felt comfortable proceeding through. Tr. 142. As he went through, a charter bus came from the right and collided with them on the officer's side midway through. He described that the bus was traveling in the far-right lane. He did not remember seeing the bus until he was in the intersection, he did not see it coming and did not know why he hadn't seen the bus before that time. Tr. 143. He cited that the impact was on the passenger side opposite the pump handle.

Employee explained that he was shocked that an accident had occurred and took a couple of seconds to realize what happened. Then he pulled the parking brake and checked on all the members. Tr. 143. Employee asserted that members seemed shaken up but that he did not see any critical injuries. Later he learned that Firefighter Black suffered a minor injury to the left side of his ribs. Everyone else was taken to hospitals for evaluation but released the same day. Tr. 144. He also said the ride-along was at the firehouse when he came to pick up his car and they spoke and she said she was uninjured and was glad he checked on her. Tr. 144. Employee did not check on the bus and asserted that another person on the scene was already talking to them. He later learned that it was just the bus driver on the bus. Tr. 145.

Employee identified Employee Exhibit 4 as the police report for the accident. Tr. 145. He cited that the report indicated that the bus driver had said he had a green light, so the police officer issued a ticket to the bus driver for a failure to yield to an emergency vehicle. Tr. 146. He also read that the police officer said that Employee was responding to emergency with lights and siren on and did not add any contributing actions for the driver of the fire engine (Employee). Tr. 147. Employee had not driven since the accident but wants to return to driving. Tr. 148. Employee identified Employee Exhibit 5 as an email exchange between him and Lieutenants Burt and Troiano about reinstatement. Tr. 148. Employee also asserted that he first completed the online portion for reinstatement on August 25, 2022.

Employee testified that in the time he had not been driving he had reached out to the Employee Assistance Program where he was put in contact with other technicians to get their input on how to deal with everything mentally and tips for driving safely. Tr. 150. He completed the online portion of the online simulation and requested, but was denied EVOC training at the academy, because he was already a technician. Tr. 150-151. Employee identified Employee Exhibit 10 as a letter from the therapist he worked with. He has also worked to keep up his technician skills by helping a rookie learn the pumps for his probation test. Tr.152. Employee further testified that in looking back at the accident, he could have been more careful and cautious in proceeding through intersections. He had not received any other disciplinary issues since August 2022 and had not had any other disciplinary issues during his time with Agency. Tr. 153. Employee identified Employee

Exhibit 6 as a memorandum from Assistant Fire Chief Craig Baker which was the Fire Disciplinary History for EMT [Employee]. That document cited that Employee had no prior history of discipline. Tr. 154.

On cross-examination, Employee reiterated that he was employed as a technician on July 31, 2022, and that the incident occurred on August 24, 2022. During that time, Employee believed he had responded to over 100 calls. Tr. 156. On August 24, 2022, he noted that he had responded to six (6) emergency calls, most were all medical calls. During his time as a technician, Employee explained that he responded to approximately 10-20 fire calls. He also testified that on August 24, 2022, the incident occurred during the first fire call of that day. Tr. 157. Employee further explained that there is no real difference between driving to medical calls and driving to calls as a technician. He noted that a technician is the assigned driver that went through testing processes. Tr. 158. He affirmed that a technician has additional responsibilities and higher standards

Employe further testified that a box alarm is a report of a house, apartment, or commercial building on fire. Tr. 158. He also explained the procedure for answering box alarm calls. Tr. 159. Employee affirmed that prior to becoming a technician, he was qualified to be a driver to box alarms and that he responded to at least a handful during that time frame. Tr. 159. Employee also affirmed that a Federal Q Siren is the same as an air siren and that the only major difference with an air siren and an electronic siren is that the latter only requires a button push, while the former requires a manual press throughout use. Tr. 160. Employee also affirmed that prior to his shift, he identified that Engine 19 electronic siren was out of service.

Employee reiterated that moments before the collision, he felt comfortable proceeding through the intersection because he had noticed all the cars were stopped at the time he was driving. Tr. 161. He noted that in looking back, that assessment was incorrect. Tr. 161. In review of the video of the incident, Employee affirmed that he could see in the video (20 second mark) that the tour bus had not come to a complete stop in the intersection. Tr. 163. Employee explained that if he had stopped, he would have seen it, but while responding on the day of the incident he did not see it until it was too late. Tr. 163. Employee agreed that if he had attempted to look in every direction he would have realized the tour bus was not stopped. Tr. 164. He also identified the 31 second mark of the video as the moment of impact. Employee cited again that at the time of the accident, he did not see the bus until it was too late. Tr. 165. Employee also explained that he felt responsible for the collision.

Employee also affirmed that he had seen other technicians drive at high rates of speed, but that he felt safe. Employee also affirmed that he was familiar with Order Book Article 17. Tr. 166. He affirmed his awareness of the rules regarding not exceeding 10 miles per hour, complete stop at red lights and eye contact with all at intersection before proceeding. Tr. 166. Employee also affirmed that during the span of the video that there was no speed limit higher than 25 miles per hour and that there were times when he drove in excess of 45 miles per hour. Tr. 166-167. Employee affirmed that there were no major injuries to members of the team, except Firefighter Black who sustained rib injuries. Tr. 168. Employee also reviewed Agency Exhibit 6 Video 2 and affirmed that Lieutenant Troiano[3] was in the bottom left corner and that other members were behind him. He also agreed that the 43 second mark showed the impact. Employee testified that he recalled someone calling him from his right. Tr. 170. Employee reiterated that members were shaken up and trying to process

[3] Agency's Representative referred to this witness as "Officer Troiano," however from previous testimony it was identified that he was a Lieutnenant. For the purposes of this decision, he will be referenced as "Lieutenant Toriano."

what happened. Employee also explained that Firefighter Black was sitting directly behind him on the driver's side. Tr. 171. He also identified the ride-along person.

Employee testified that he had briefly reviewed the special reports from other members. Tr. 172. He recalled that Lieutenant Troiano remarked about needed to slow down in his report, but did not recall Officer Troriano saying that to him on the day of the incident. Tr. 172. Employee further testified that he thought someone had said on the scene that the bus driver had refused treatment but noted that the say was "kind of crazy" so he could not recall specifically who stated that. Tr. 173. Employee did not speak directly with the bus driver. Tr. 174. Employee remained on the scene for about 20 minutes. He said that the Metropolitan Police Department never spoke directly to him and did not ask him how the accident occurred, nor the speed he was travelling at the time of collision or if he had complied with Fire/EMS rules. Tr. 174-175. Employee also cited that the police officer's report cited that he had no contributing action and that he trusts the officer's knowledge and decision making. Tr. 175. When asked what his own opinion was, Employee cited that there were multiple factors why it happened. Tr. 176.

On redirect, Employee testified that he has received positive feedback in the Department, with many saying he was a good driver, and they felt comfortable with him. Tr. 176. Employee reiterated that he looks at the speed odometer and utilizes the sirens and horns. He also noted that at intersections, he uses sirens and air horn to alert other drivers to ensure all see and hear him coming. Tr. 177. Employee testified that that is what he did to the best of his ability on August 24th. Tr. 177. On recross examination, Employee affirmed that he knew he could reapply for technician position but maintained that it would be a very tough process for him to get into. Tr. 178.

When asked by the panel how many box alarms and fires he had responded to whether driving or as a backstep during his time with the Department and volunteer, Employee indicated that "It's been hundreds." Tr. 179. Employee also affirmed that there can be clues when working incidents from dispatch. Tr. 179. Employee also explained that he has personally learned that he needed to take a breath, relax and think when driving. Employee also noted that being a technician was a source of pride for him in his work and that he knows the core values of the Department, namely safety. Tr. 180-181. Employee also explained to Agency's representative that a "working incident" relates to a box alarm in that the reported address is actually on fire, that there's a fire inside the building to consider. Tr. 181.

John Dennis MacKinnon ("MacKinnon") Tr. 182 – 200.

Mackinnon testified that he is a Firefighter and EMT Private assigned to Truck 16 Number 3. Tr. 182. He had been with the Department for four (4) years and had been on Truck 16 for approximately two (2) years. He also noted that this was not his first experience as a firefighter, as he worked in the Alexandria Fire Department for three (3) years. Tr. 183. Mackinnon further testified that he knew Employee very well and that he first met Employee in a recruit class for the Alexandria City Fire Department around September 2015. Tr. 184. He explained that he and Employee worked on the same shift in Alexandria approximately twice a month. They also worked the same shifts for Agency. He cited that he and Employee both worked on Platoon Number 3 and Engine 32 together and both work on Engine 19 together. Tr. 185.

MacKinnon maintained that he feels "outstanding" when working with Employee because he trusts him with his life. Tr. 185. MacKinnon was aware of Employee's driving training and knew

some of the technicians he learned from. He described their driving to be like Employee's – "safe sound and the same type of impetus to get to their location for whatever the alarm may be." Tr. 186. MacKinnon testified that he had seen other technicians fail to come to complete stop at a red light. Tr. 187. Additionally, he explained that while he's never looked at the speed odometer, he could feel that other technicians were exceeding the posted speed limit up to 15 miles per hour or more. Tr. 187. He also testified that he has witnessed Employee driving approximately 10 times or more. He maintained that Employee exhibited qualities of a good driver, including knowing the area, how to put water on the fire etc. Tr. 188. He said that Employee's driving skills were the same as other technicians. Tr. 189.

MacKinnon testified that he was not at work on August 24, 2022, but he is familiar with the accident that occurred. Tr. 189. MacKinnon testified that his knowledge of the accident does not change his willingness to work with Employee and reiterated that he trusts him with his life. Tr. 189. MacKinnon said that he has spoken with Employee about the accident. Employee shared with him that he did not see the bus. Tr. 190. MacKinnon also testified that he has witnessed Employee learning from the accident and that he is always asking questions and that Employee has talked about taking the EVOC class again. Tr. 191. MacKinnon affirmed that he would like to see Employee return to his technician duties because he's an asset to the Department. Tr. 192.

On cross-examination, MacKinnon testified that he has been involved in two collisions, both of which occurred in 2020. One was an engine backing into a vehicle and another was when an ambulance was stuck in a ditch. Tr. 193. MacKinnon cited that he was driving the ambulance and affirmed he was driving with both collisions he attested to. Tr. 195. He has also been on board as a passenger when another driver had a collision but that was not with the DCFEMS. Tr. 195. He also testified that he has ridden with approximately 12-15 other technicians with DCFEMS. Those technicians were not involved in collisions. MacKinnon also reiterated that he trusts Employee with his life and stated that he considers him a friend. Tr. 196. He also agreed that as a friend he would not want to see him demoted. Tr. 197. He also explained that he was not trying to deflect from Employee in pointing out others' violations but was explaining past practices. Tr. 197-198.

On redirect, MacKinnon asserted that even though Employee is a friend, that he is able to maintain objectivity in evaluating him professionally. Tr. 198. On recross examination, MacKinnon maintained that he was completely objective, neutral and not at all biased in his testimony. Tr. 199.

Devon Black ("Black") – Tr. 200 – 212.

Black testified that he was a Firefighter assigned to Engine 19, and he had been with Agency approximately five (5) years. He testified that he has experience driving with Agency. Tr. 201. He explained that he knows Employee, because he is a technician with Engine 19. He describes Employee's driving as "pretty much par for the course, average, what you see around." Tr. 202. He further explained that Employee was baseline in that he's seen people drive more aggressively and others who go the other way, so Employee's is normal. Tr. 203.

Black further testified that on August 24, 2022, he was riding on Engine 19 in the layout position directly behind the driver. He recalled that they were at a Safeway on Alabama and Good Hope Road getting things for lunch when "the box dropped in our first district." He further explained that they responded from that area. Tr. 203. He went on to testify that the impact occurred

at Pennsylvania and Alabama. Black testified that he realized there was an impact because glass showered around them. Tr. 204.

Black also testified that he heard a loud bang and thought that maybe they had blown a tire, but the glass showed something more serious had occurred. He explained that he realized what had happened because he heard Engine 32 on the radio. Tr. 205. He said he heard Captain McAllister say something to the effect of "Engine 19 just got broadsided by a bus." He recalled speaking briefly with Employee, but it was maybe just a sentence offering condolences. Tr. 206. He testified that Employee was distraught about the situation. Tr. 206. Black testified that he sustained a fractured rib and ongoing back problems since the accident. Tr. 207. He is still on the same crew as Employee and affirmed that the accident does not affect his willingness to work with Employee as a technician and driver. Tr. 206. He explained that his philosophy is that you learn from mistakes and cited that Employee is always very professional. Tr. 207.

On cross-examination, Black testified that he had not seen video footage of the accident. Tr. 207. He reiterated that he was sitting in the back, and his back was turned outside the window, so he didn't directly observe it at the time. Tr.208. He did not know if Engine 19 had a red or green light at the time of the collision. He did not know that Engine 19 had a red light, and the bus had a green light. He wrote a Special Report and recalled he wrote that he was "slammed into the compartment covering Engine 19's engine and that he hit the center of his back." Tr. 208-209. That was the extent of his recollection about the pain he endured at the time of the accident. Tr. 209. He reiterated that he fractured one (1) rib and noted he deals with ongoing back pain. Tr. 209-210. Prior to this, he had not been involved in any collisions while working at Agency and reiterated he had been with Agency for five and a half (5.5) years. He also had no knowledge of how fast Engine 19 was traveling leading up to the collision. Tr. 210-211.

Tarajahy Ruffin ("Ruffin") Tr. Pg 212 – 221.

Ruffin is employed as Firefighter/EMT assigned to Engine 19, Number 3. Tr. 213. She noted that Employee was her technician and was helping her out with her EMT Medic skills. She testified that she had witnessed Employee driving an engine for about four (4) tours. She explained that he was a good driver, the best driver on their shift. Ruffin further testified that on the day of the incident; she was the lineman. She recalled on that day; they were at a Safeway when they got a box alarm. On the way to the box alarm, they were in an accident. She did not speak to Employee at the scene of the accident and noted that she did not sustain any injuries. Tr. 215.

On cross examination, Ruffin cited that she was aware of one person who sustained injuries to their back. Tr. 216. She also explained that they had a ride along that day, but she did not know what type of injuries she sustained because she's not seen her since that day. Tr. 216-217. She affirmed that everyone was transported to the hospital. Ruffin also affirmed that she submitted a Special Report. She recalled that she wrote in her report that she saw everyone was "hurt pretty bad". Tr. 217. She explained that what she meant by that was that everyone "was pretty shook up in the truck, but the only person who had, like true injuries was Firefighter Black." Tr. 217. She did not speak with every other member who was on board about their injuries. Tr. 218. She did not see what occurred leading up to the collision and has not reviewed any video footage of the collision. Tr. 218. She recalled only that they were going through a light and that a bus was coming through the light as well. Tr. 219. She did not know the color of the lights nor how fast they were traveling at the time of the collision. Tr. 219. She was not? familiar with Article 17 of the Order Book. Tr. 220. She was

familiar with the driver safety rules in that they are not to exceed more than 10 mph over the posted speed limit and that they are to come to a complete stop before going through a red light. Tr. 220.

Captain Brian McAllister ("Captain McAllister") Tr. 221 – 242

Captain McAllister testified that he is a Captain assigned to Engine 3, Number 4 division and had been in this roll since 2018. Tr. 221-222. He also testified that he has been with DCFEMS since 2001. Tr. 222. Captain McAllister testified that he is familiar with the technician training that the department provides. Tr. 222. He cited that there is a serpentine course at the Fire Academy and a road test and station-based training as well. Tr. 222. He also noted that technicians prepare for the road test by the actions he described in terms of training. Tr. 223. To prepare for the driving portion, the preparation includes driving around the local alarm area after runs, between calls etc. Tr. 223. He also cited that turns are taken being an emergency drive and drive when other technicians are off duty or under the supervision of an officer and a technician. Tr. 223.

Captain McAllister testified that he knows Employee, as he was assigned to him as a rookie at Engine 32. He cited that he was Employee's direct supervisor for approximately three (3) years. He further noted that Employee has a very good attitude on the job and was always willing to learn and help others. Tr. 224. He was also very reliable and became his "go-to" person while there. Tr. 225. He also managed stressful situations well. Captain McAllister was aware that Employee had received the technician driving training Tr. 225. He said it also included learning from more senior technicians. Tr. 226. He further testified that he witnessed it hands on between regular drills and regular duties. He was his backup driver as well. Tr. 226. Captain McAllister explained that Employee started this practical training as soon as he completed his probationary period. Tr. 226. Captain McAllister estimated that he had witnessed hundreds of runs where Employee was driving and that he was a very good driver. He handled the vehicle well, forecasted other vehicles well and navigated well. Tr. 227. He specially remembered that Employee would stop at red lights, because there was one point where he told Employee that he could go because nothing was coming. Tr. 228.

Captain McAllister was aware of the accident because he was the one who called it in. He caught view of the accident in his peripheral but did not see it actually happen Tr. 228. He was on another engine traveling behind Employee. Tr. 229. He thought that both engines were going at the same pace as they proceeded down Alabama Avenue. Tr. 229. Captain McAllister also explained that the box alarm had notes that there may have been people trapped, possibly a bedridden patient. Tr. 230. The conditions for driving that day were fine, but he would say that people were probably a bit more amped up because this is not a frequently responded to area and when it is, it's normally a real emergency that they were called for. Tr. 230. He did not notice anything specific about Employee's speed. Tr. 231. He affirmed that his engine, Engine 32, was also investigated after the accident. On the scene, they were told they were good, and nothing was on their camera. Tr. 231. He said he did tell Employee at the scene to calm down. Captain McAllister noted that he could not give a true impression of the intersection because they were far away. He noted that Employee said he didn't see it and that if he's telling him that, he knew he didn't. Tr. 232. The accident had no impact on Captain McAllister's impression of Employee's driving. Tr. 233. He said Employee is one of the most sincere and honest people. Tr. 233.

On cross examination, Captain McAllister affirmed he was asked to testify on behalf of Employee. He reiterated that it was a "accordion style" driving that day, and sometimes he could see Employee and other times he could not. He is familiar with the Driving Safety rules of the Order

Book. Tr. 234. He is aware that drivers are to come to a complete stop at a red light and that they are not to exceed the speed limit by more than 10 mph. Tr. 234-235. He also reiterated that he was in Engine 32 behind Engine 19 and that he was not able to see the traffic light before the collision. Captain McAllister testified that once he saw the report about the accident, that was when he was made aware that Engine 19 had not stopped at a red light, but other than that he had no visual proof. Tr. 236. He noted that he did see the damage and that it was substantial to both vehicles. He also iterated that he observed a bump on Employee's left side of his head. Tr. 237. He recalled some injuries, namely a back injury but was not able to remember specifically. Tr. 237.

Captain McAllister testified that the reason he can still be comfortable with Employee as a technician is because he has witnessed him and he has never seen him willfully put his crew into any danger. Tr. 238. Captain McAllister cited that he had not reviewed the video of Agency's Exhibit 6 Video 1. In viewing the video, he affirmed that he saw a red light and that he saw the tour bus. Tr. 240. He noted that he could speculate that if Employee had stopped completely, he might have seen the tour bus but iterated that it would be speculation. Tr. 240-241. On redirect examination, Captain McAllister cited that he and Employee had not discussed the accident. He affirmed that he still has full faith and confidence in the Employee to return to duty as a technician. Tr. 242.

Panel Findings

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

1. Firefighter/Technician [Employee] was aware of the rules he violated.
2. There was no justification for violating the rules.

Upon consideration and evaluation of all the testimony and factors, the Trial Board Panel found (by a majority) Employee guilty of Charge No.1, Specification No.1. In addition to making the findings of fact, the Panel also weighed the offense against the relevant *Douglas* factors[4] and

[4] *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

the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

concluded that a demotion from Firefighter Paramedic Technician to Firefighter/Paramedic was an appropriate penalty.

ANALYSIS AND CONCLUSION[5]

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,[6] OEA has a limited role where a departmental hearing has been held. According to *Pinkard*, the D. C. Court of Appeals found that OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The statute gives OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.[7] The Court of Appeals held that:

> "OEA may not substitute its judgment for that of an agency. Its review of the agency decision…is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency's credibility determinations."

Additionally, the Court of Appeals found that OEA's broad power to establish its own appellate procedures is limited by Agency's Collective Bargaining Agreement. Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met:

> 1. The appellant (Employee) is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
>
> 2. The employee has been subjected to an adverse action;
>
> 3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
>
> 4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; *and*
>
> 5. *At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing*, made findings of fact and conclusions of law, and recommended a course of action to the deciding

[5] 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").
[6] 801 A.2d 86 (D.C. 2002).
[7] *See.* D.C. Code §§ 1-606.02(a)(2), 1-606.03(a),(c); 1-606.04 (2001).

> official that resulted in an adverse action being taken against Employee (emphasis added).

There is no dispute that the current matter falls under the purview of *Pinkard*. Employee is a member of the D.C. Fire and Emergency Medical Services Department and was the subject of an adverse action (demotion); Employee is a member of the International Fire Fighters. Local 36, AFL-CIO MWC Union ("Union") which has a Collective Bargaining Agreement ("CBA") with Agency. The CBA contains language similar to that found in *Pinkard* and Employee appeared before a Trial Board Panel on March 6, 2023, for a hearing. This Panel made findings of fact, conclusions of law and recommended that Employee be demoted from his position as technician. As a result, I find that *Pinkard* applies in this matter. Accordingly, pursuant to *Pinkard*, this Office may not substitute its judgement for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of (1) whether the Trial Board Panel's decision was supported by substantial evidence; (2) Whether there was harmful procedural error; and (3) Whether Agency's action was done in accordance with applicable laws or regulations.

Brief Summary of the Parties' Positions

Agency's Position

Agency asserts that its actions were warranted and are supported by substantial evidence. Agency cites that on August 24, 2022, Employee was involved in an accident while operating the Engine for a box alarm call. Agency avers that Employee failed to follow the procedures and policies outlined under Article XVII § 2 of the Order Book which notes that a member should not exceed posted speed limits by more than 10mph, travel in opposing lanes at a speed exceeding 20mph, proceed into an intersection without coming to a complete stop and proceeding through an intersection without attempting to make eye contact with every other driver.[8] Agency also argues that there was no harmful procedural error in its administration of the instant action. Agency argues that Employee's assertions that it failed to follow the Collective Bargaining Agreement ("CBA") in this matter constitute "harmless error." Agency concedes that there was a "brief delay in the service of the IWN[9] to Employee," as required by the CBA, but that "delay was harmless because it did not cause substantial harm or significantly affect Agency's Final Decision."[10] To support this contention, Agency asserts that OEA has previously held that Section B of the CBA is directory in nature "because there is no express consequence for failing to meet any deadline in Section B. *Johnson v. FEMS*, OEA Matter No. 1601-0002-22(July 1, 2022)."[11] Agency further notes that the arbitration matter (*Local 36 v. FEMS* Case No. 230420-0564 (Dec. 29, 2023) (In re Article B) Employee cites to as support for his position and the D.C. Court of Appeals' decision of *Rodriquez v. Office of Employee Appeals*, are not applicable in this matter.[12] Regarding the arbitration decision, Agency asserts that *In re Article 32 B* should not be given precedential effect before this tribunal because "it is black letter law that arbitration awards are not entitled to the precedential effect accorded to judicial decisions….[i]ndeed, an arbitration award is not considered conclusive or binding in subsequent cases involving the same contract language."[13] Agency contends that its

[8] Agency's Brief at Page 9 (June 18, 2024).
[9] This stands for the Initial Written Notification.
[10] *Id.*
[11] *Id*. at Pages 9-10.
[12] *Id.* at Page 12. *Rodriguez v. Office of Employee Appeals*, 145 A.3d 1005 (D.C. 2016).
[13] *Id.*

penalty was appropriate under the circumstances and that it action of demoting Employee was a "reasonable exercise of managerial discretion" and should be upheld.

Further, Agency avers that Employee's arguments do not "fully explain why the views of Arbitrator Roger Kaplan are better applied to this matter than OEA precedent."[14] Agency asserts that "it is not seeking to upset any determination made by a labor arbitrator…[w]hile Arbitrator Kaplan found that Section B was mandatory when adjudicating the specific case before him, he expressly declined to provide a blanket remedy precluding Agency from applying a balancing test in pending cases, including the instant matter, because such an order would be outside his jurisdiction."[15] As such, Agency maintains that its action should be upheld.

Employee's Position

Employee contends that his appeal largely rests with a "single provision in the CBA: Article 32, Section B." Employee avers that Agency failed to abide by the CBA in its administration of the instant adverse action. Specifically, Employee avers that in accordance the negotiated disciplinary procedures, Agency was required to notify Employee "of the alleged infraction or complaint filed against him/her in writing within seventy-five (75) days of after the alleged infraction or complaint, or such time as the employer becomes aware of the alleged infraction or complaint." Employee further notes that this is called the "Initial Written Notification"[16] (hereinafter referred to as IWN). Employee asserts that he was involved in an accident on August 24, 2022, while operating Engine 19. He notes that "[i]t is undisputed that on October 19, 2022, the Agency served [Employee] with an Initial Written Notification charges related to the accident."[17] Employee further asserts that in accordance with the CBA, Agency should have issued the Notice of Proposed Action 60 days later, which in this case would have been by December 18, 2022. However, Agency did not meet that deadline and did not serve the Notice until December 30, 2022. Employee cites after receiving the case file on January 13, 2023, "his counsel requested that the discipline against him be dismissed under Article 32, which motion they renewed at the Fire Trial Board hearing on March 6, 2023."[18] Employee also notes that " on January 17, 2023, the Union filed a class grievance – which included [Employee's] case- asserting that Agency had violated Article 32 by proceeding with untimely disciplinary actions in which it had failed to follow the Article 32, Section B time limits…"[19] Employee proffers that on December 29, 2023, while [Employee's] case was still pending, Arbitrator Roger P. Kaplan issued an Opinion and Award (previously submitted to the OEA on May 3, 2024 as Exhibit B to Employee's Prehearing Statement) ("Kaplan Award") resolving that class grievance."[20]

Employee maintains that the Arbitrator found the CBA disciplinary time limits to be mandatory in nature and that the Agency should comply with the time limits and "stop interpreting Article 32.B in a manner that results in the disciplinary actions being prosecuted in situations where the [Agency] has not complied with the time limits set out therein."[21] Employee notes that despite the arbitration ruling, Agency elected to move forward with the instant action and refused to dismiss the charges. Employee avers that in working with the CBA the "parties have understood that if the

[14] Agency's Sur Reply Brief at Page 2 (August 9, 2024).
[15] *Id*. at Page 3.
[16] Employee's Brief at Page 1-2 (July 30, 2024).
[17] Employee's Brief at Page 2 (July 30, 2024).
[18] *Id*. at Pages 2-3.
[19] *Id* at Page 3.
[20] *Id*.
[21] *Id*.

Agency failed to follow these bargained-for procedures in Article 32, then the adverse action is precluded and the disciplinary charges against employee should be dismissed."[22] Employee cites to other arbitration decisions to note the "longstanding practice" of treating the provision of the CBA in this way as related to timelines. Employee further asserts that because of these practices it "means the time limits are mandator, just as if the practice were explicitly written into the CBA."[23] Additionally, Employee asserts that "unless the OEA cases the Agency cites – including *Johnson v FEMS*, OEA Matter No. 1601-0002-22 (July 1, 2022), on which it primarily relies – (Agency's Brief 9-11), [Employee] has submitted record evidence here of the parties' longstanding practice of treating Article 32.B time limits as mandatory, as interpreted by arbitrators through the bargained-for arbitration process."[24] Because of this, Employee asserts that he has "supplied OEA with the correct interpretation of the CBA that it must now follow." Employee also argues that "[t]he Agency's assertion that the Kaplan Award (and presumably the others) is inapplicable because arbitration awards get no deference and are non-precedential, Agency Brief 12, is disingenuous at best because it misstates the longstanding role of labor arbitration in the collective-bargaining process-of which Agency is well aware."[25]

Employee also asserts that "[b]ecause the Article 32.B-time limits are mandatory, the decision of the D.C. Court of Appeals in *Rodriguez v. Office of Employee Appeals*, 145 A.3d 1005 (D.C. 2016) controls here." Employee explains that in that matter, "the Court of Appeals addressed an agency's failure to adhere to a mandatory provision of a CBA requiring notification of proposed disciplinary action withing 45 days…[i]n the underlying decision being reviewed by the Court of Appeals, the OEA had acknowledged the agency's violation of the CBA, but found it was merely "harmless error" because, in its view, the CBA violations did not prejudice the employee."[26] Employee avers that the Court of Appeals reversed the OEA decision finding that "agency's failure to follow the CBA's mandatory notification provision "cannot be said to amount to harmless error, because if the Agency had complied with the provision, appellant's employment would not have been terminated…"[27] Employee also argues that the Agency "attempts to distinguish *Rodrigues* on the incorrect assertion that the Article 32. B time limits are "directory" and not mandatory like those in *Rodriguez*, *id*. 9-13, because Article 32 "does not set out a consequence for failure to meet the deadline."[28] Employee avers that this is untrue. Employee notes that "[i]t is no moment that Article 32.B lacks an express consequence for violation of its time limits: the Agency and Union, through longstanding practice, as interpreted by bargained-for arbitrators, have understood that violations of Article 32.B time limits preclude discipline, just as certainly and as binding as if the understanding were expressly memorialized in the CBA.."[29] Employee further argues that Agency's argument that there was no substantial harm cause by its delay is "precisely the type of balance test the CBA forbids." As such, Employee maintains that OEA must follow the interpretation of the CBA as noted in the Kaplan Award and the holding in *Rodriguez* and find that this is a mandatory provision.[30]

---

[22] *Id*. at Page 4.
[23] *Id*. at Page 5.
[24] *Id*. at Pag 6.
[25] *Id*.
[26] *Id*. at Page 8.
[27] *Id.*
[28] *Id.* at Pages 8-9.
[29] *Id*. at Page 9.
[30] *Id.*

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

Pursuant to *Pinkard*, the undersigned must determine whether the Trial Board Panel's ("Panel") decision was supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[31] If the Panel's findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record to support findings to the contrary.[32] In the instant matter, I find that the Trial Board's findings were supported by substantial evidence. Specifically, the Panel reviewed the video evidence that was a part of the investigation into the matter which revealed that Employee had not followed the Order Book rules as prescribed. Namely, on August 24, 2022, Employee was operating Engine 19 for a box alarm in Southeast Washington, D.C. The video evidence – known as the "Rosco video" was presented and identified through witnesses, showed that Employee had exceed the limitations of speed as prescribed in the Article XVII § 2 of the Order Book. Employee was found to have been traveling at a speed of 45 mph in a 15 miles per hour (mph) zone and at 57 mph in a 25 miles per hour zone. The Order Book clearly notes that speeds are never to exceed more than 10mph for any reason. On this same date, Employee was ultimately involved in a collision with a charter bus. While Employee maintains that he scanned the intersection as required before proceeding through it, a collision still occurred. The investigation showed that Employee had not come to a full stop at the intersection, thus violating Order Book Section XVII §2. Employee did not receive any ticket or citation from the Metropolitan Police Officer on the scene, however other employees had to be sent for evaluation at local health care facilities and one employee sustained back and other injuries.

Based upon the review of the Trial Board transcript, the Panel remained engaged and listened to all witnesses. After consideration of the testimonial and documentary evidence, the Panel determined that the charge against Employee should be sustained. Further, Employee did not refute the charges *per se* and acknowledged his errors as related to speed; but maintained that his actions were not unlike those of other technicians in similar situations. This noted, I find that the Panel had substantial evidence to support their findings. As a result, I find that the Board's findings to sustain the charges were supported by substantial evidence and in accordance with the standards of *Pinkard*, I find that those findings can be sustained.

Whether there was harmful procedural error

Employee argued that Agency violated Article 32 Section B of the CBA which required Agency to provide notice of the proposed action within 60 days. Agency does not deny this and classifies it as a "brief delay in the service of the IWN to Employee."[33] Further, Agency asserts that "the delay was harmless because it did not cause substantial harm or significantly affect Agency's Final Decision." Agency further maintains that Employee "has not articulated any prejudiced cause by the delay….[i]nstead, he relies on an argument that Section B is mandatory."[34] Agency avers that Section B is directory in nature, and not mandatory, and because of this, the delay is subject to harmless error as noted in 6-B DCMR §699. Employee avers that Article 32 B is mandatory in nature; as noted within the longstanding practice of bargained for procedures between Agency and

[31] *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).
[32] *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987).
[33] Agency Brief at Page 9.
[34] *Id*.

the Union, and as articulated in the "Kaplan Award" of the arbitration decision related to Employee's matter. Employee also avers that Agency's argument regarding "harmless error" fails because if Agency had followed the CBA as prescribed, Employee would not have been demoted, as discipline would not have proceeded. Agency asserts that a "balancing test" must be applied here because Article 32 B does not have a consequence for a failure to abide by a timeline. As such, Agency asserts that OEA should apply the harmless error considerations and in so doing, find that its delay did not cause substantial harm to Employee in this matter and that the disciplinary action of demoting Employee from Technician to Firefighter/Paramedic was an appropriate penalty in these circumstances.

As it relates to the CBA argument presented by the parties, typically, OEA does not review matters that are under the guidance of a Collective Bargaining Agreement. However, the District of Columbia Court of Appeals held in *Brown v. Watts*, 933 A.2d 529 (April 15, 2010*),* that this Office is not "jurisdictionally barred from considering claims that at termination violated the express terms of an applicable collective bargaining agreement."[35] The Court went on to explain that the "Comprehensive Merit Personnel Act ("CMPA') gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including matters covered under subchapter [D.C. Code § 1-616] that also fall within the coverage of a negotiated grievance procedure."[36] In the instant matter, Employee was a Local 36 ("Union") member at the time of his demotion. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between Agency and the Union, related to the adverse action at issue in this matter.

In the instant matter, it is undisputed that Agency failed to issue the Proposed Notice within 60 days of the IWN as required by Article 32 B of the CBA. Agency asserts that this constitutes "harmless error on its part" and that OEA has held that in instances where consequences are not specified, these types of directives are directory not mandatory in nature. Alternatively, Employee asserts that the longstanding practices between the parties as related to the execution of CBA, as well as the arbitration decision related to this matter, evince that this provision in Article 32 B is mandatory in nature. Employee further relies upon the arbitration decision (Kaplan Award) wherein the arbitrator found that provisions of Article 32 B had not been complied with by Agency. Further, Employee asserts that the Court of Appeals in *Rodriguez* held that these matters are not directory in nature and that Agency's actions constitute harmful error and that this disciplinary measure should not have moved forward.

The OEA Board, consistent with the D.C. Court of Appeals, has held that there is a "general rule that [a] statutory time period is not mandatory unless it both expressly requires an agency or public office to act within a particular time period and specifics a consequence for failure to comply with those directives."[37] Additionally, the OEA Board in W*atkins v. Department of Youth Rehabilitation Services*,[38] maintained the holding cited in the *Teamsters* matter when it made the determination that because the time period expressed in that matter did not have an explicit consequence, that it was directory in nature. Further, the OEA Board noted that directory provisions require the implementation of a "balancing test" to ascertain "any prejudice to a party caused by agency delay is outweighed by the interest of another party or the public in allowing the agency to

---

[35] *Shands v. District of Columbia Public Schools*, OEA Matter No. 1601-0239-12 (May 7, 2014); See also *Robbins v District of Columbia Public Schools*, OEA Matter No. 1601-0213-11 (June 6, 2014).
[36] *Id.*
[37] *Quamina v. DYRS*, OEA Matter No. 1601-0055-17, *Opinion and Order on Petition for Review* (April 9, 2019), citing to *Teamsters Local Union 1714 v. Pub. Employee Relations Bd*., 579 A.2d 706, 710 (D.C. 1990).
[38] OEA Matter No. 1601-0093-10, *Opinion and Order on Petition for Review* (January 25, 2010)

act after the statutory time period has elapsed."[39] Here, Article 32 B does not have any explicit consequence outlined for Agency's failure to comply with the timelines. This noted, the undersigned recognizes that the arbitration award ("Kaplan Award") does reflect an interpretation of the CBA in such a way that would be sufficient to suggest that this provision is mandatory in nature. However, the undersigned is bound by the precedent set forth by the D.C. Court of Appeals and the OEA Board in this matter before the Office. Thus, I must apply a balancing test and review this matter under the harmless error test. OEA has defined harmless error as "an error in the application of a District agency's procedures, which did not cause substantial harm or prejudice to the employee's rights, or significantly affect the agency's final decision to take the action."[40]

The OEA Board also addressed this issue of harmless error in the previously referenced *Quamina* matter. The OEA Board held in that matter that "… *an agency's violation of a statutory procedural requirement does not necessarily invalidate the agency's adverse action. Thus, the facts in this matter warrant the invocation of a harmless error review. In determining whether Agency has committed a procedural offense as to warrant the reversal of its adverse action, this Board will apply a two-prong analysis: whether Agency's error caused substantial harm or prejudice to Employee's rights and whether such error significantly affected Agency's final decision to suspend Employee*."[41] Further, the undersigned would also not that in *Rodriguez*, the D.C. Court of Appeals distinguished the provision of that CBA, noting that there was a specific consequence outlined in that agreement for failure to comply with the deadlines.[42] Thus, the Court found that failure to comply would not be 'harmless error.' Accordingly, in consideration of the D.C. Court of Appeals decision in *Rodriguez*, coupled with the aforementioned OEA Board's analysis to the instant matter; I find that Agency's failure to issue the proposed notice within 60 days following the IWN to constitute harmless error. This is notwithstanding the arbitration award, which clearly cites that Agency failed to comply with the bargained-for provision of the CBA. This stated, in consistency with OEA's findings in these matters, I must find that that Agency's failure to comply with the CBA timeline provisions in Article 32 B constitute harmless error.

Whether Agency's action was in accordance with applicable laws, rules and/or regulations

For the same reasons outlined above, I find that Agency's actions, despite having failed to comply with the CBA in this matter, were otherwise in accordance with applicable laws, rules and regulations.

Whether the Penalty was Appropriate

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).[43] Therefore when assessing the

---

[39] *See. JGB Property v. D.C. Office of Human Rights,* 364 A.2d 1183 (D.C. 1976); and *Brown v. D.C. Public Relations Board,* 19 A.3d 351 (D.C. 2011). See also *Quamina*, *supra*.
[40] OEA Rules §699.1
[41] *Quamina*, *supra* at footnote 35.
[42] *See. Rodriguez v. Office of Employee Appeals, supra.* at Pages 17 -20.
[43] *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);

appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[44] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[45] Based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charges were based on substantial evidence and that there was no harmful procedural error. Consequently, the undersigned concludes that the Agency's action should be upheld.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of demoting Employee from Technician to Firefighter/Paramedic is **UPHELD**.

FOR THE OFFICE: **/s/ Michelle R. Harris**
Michelle R. Harris, Esq.
Senior Administrative Judge

---

and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

[44] *Love* also provided the following:

> [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, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[45] *Id. See also. Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.