

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

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of: EMPLOYEE¹, v. METROPOLITAN POLICE DEPARTMENT, Agency))))))))) OEA Matter No. 1601-0073-25 Date of Issuance: July 29, 2026 MONICA DOHNJI, Esq. Senior Administrative Judge Daniel McCartin, Esq., Employee's Representative Michele McGee, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 22, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Metropolitan Police Department’s (“Agency” or “MPD”) decision to terminate him from his position as a Police Officer, effective July 24, 2025. Employee was terminated for four (4) separate incidents. Under the first incident (**DRD # 674-23**) which occurred on August 16, 2023, Employee was charged with violating (1) General Order (“GO”) Series 120.21, Attachment A, Part A-16; (2) G.O. Series 120.21, Attachment A, Part A-4; and (3) G.O. Series 120.21, Attachment A, 24.² For the second incident (**DRD # 809-23**) that occurred on August 19, 2023, Employee was charged with violating: (1) G.O. 120.21, VI, A, 11; (2) G.O. Series 120.21, Attachment A, Part A-24; (3) G.O. Series 120.21, Attachment A, Part A-16; and (4) G.O. Series 120.21, Attachment A, Part A-7.³ For the third incident (**DRD # 043-24**) that occurred on August 19, 2023, Employee was charged with violating: (1) G.O.120.21, Attachment A, 16; (2) G.O. 120.21, VI, Part A-11; and (3) G.O. Series 120.21, Attachment A, Part-7.⁴ For the fourth incident (**DRD # 022-24**) that occurred on August 12, 2023, Employee was charged with violating: (1) G.O. 120.21, Attachment A, VI, A, 11; (2) G.O. Series 120.21, Attachment A, Part A-7; and (3) G.O. Series 120.21, Attachment A, Part A-24.⁵ OEA issued a Request for Agency Answer to Petition for Appeal on August 25, 2025. Thereafter, Agency

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

² See Petition for Appeal at Attachment 1.

³ *Id.* at Attachment 2.

⁴ *Id.* at Attachment 3.

⁵ *Id.* at Attachment 4.

submitted its Answer to Employee's Petition for Appeal on September 19, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on September 23, 2025.

Thereafter, the undersigned issued an Order on October 2, 2025, convening a Status/Prehearing Conference for October 23, 2025. On October 14, 2025, Employee filed a Consent Motion to Continue Prehearing Conference. This Motion was granted in an Order dated October 16, 2025, and the Status/Prehearing Conference rescheduled for November 18, 2025. Both parties were present at the scheduled conference wherein it was determined that this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). Consequently, on that day, the undersigned issued an Order requiring the parties to submit written briefs addressing the following: (1) whether Agency's decision to take adverse action against Employee was supported by substantial evidence; (2) whether there was harmful procedural error with the Trial Board's decision; and (3) whether Agency's action was done in accordance with all applicable laws and regulations. Agency's brief was due by December 12, 2025; Employee's brief was due by January 6, 2026; and Agency had the option to file a sur-reply by January 27, 2026. Agency filed a Consent Motion to Extend the Time for Filing Briefs, on December 29, 2025, citing docketing error. Accordingly, the undersigned granted Agency's motion in an Order dated January 23, 2026. Both parties have submitted their respective briefs. 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.⁶

STATEMENT OF THE CHARGE(S)

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

DRD # 022-24

Charge No. 1: Violation of General Order 120.21, VI, A, 11, which states, "Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violation of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia."

Specification No. 1: In that, on August 12, 2023, you utilized antagonizing, harsh and insolent language when you leaned into Mr. Ferguson's face and said in a loud tone, "Do something then, do something then, do something then!" Your behavior was so egregious that Officer Kohns was compelled to grab the back of your carrier vest in order to de-escalate the encounter with Mr. Ferguson. Additionally, you began to argue with another person on the scene, telling him, "I am not talking to you, I'm talking to your daddy, I'm talking to your daddy, I'm talking to your daddy." Your conduct was also in violation of General Order 201.26, V, C, 3, which states, "All members shall: Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person."

Charge No. 2: Violation of General Order Series 120.21, Attachment A, Part A-7, which states, "Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty. Three sustained adverse actions within a 12-month period upon charges involving misconduct, as provided in this section, shall be *prima facie* evidence of inefficiency. The adverse action charges need not be related."

Specification No. 1: In that, following a review of your work history it was revealed that you have had four (4) prior sustained adverse actions within the past 12-month period; DRD# 847-22 May 8, 2023, DRD# 021-23 February 6, 2023, and

⁶ OEA Rule § 699.1.

DRD# 043-23 & 674-23, which are within the past 12-month period and are pending a final disposition.

Charge No. 3: Violation of General Order Series 120.21, Attachment A, Part A-24, which states, “Any conduct not specifically set forth in the order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force.”

Specification No. 1: In that, on August 12, 2023, you engaged in a highly improper and unacceptable interaction with multiple citizens where you utilized disrespectful language that was demeaning and insulting. Your actions occurred in full view of the public, and in the presence of citizens and other uniformed members of the agency. Your actions brought discredit upon yourself and the reputation of the department that you represent.

DRD # 043-24

Charge No. 1: Part A-16, which states, “Failure to obey orders or directives issued by the Chief of Police.”

Specification No. 1: In that, on August 19, 2023, you utilized your privately owned vehicle (POV) while on-duty, and became involved in a traffic crash. This misconduct was in violation of General Order 201.26, Part V, Section A, 3, which reads: “Members shall not utilize their privately owned mode of transportation for official business unless approved by a superior in accordance with GO-PER-301.07.”

Charge No. 2: Violation of General Order 120.21, VI, A, 11, which states, “Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee’s or the agency’s ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.”

Specification No. 1: In that, on August 19, 2023, you categorized and titled your BWC recording from an on-duty traffic crash involving your POV as “TESTING”, when it was evident that it was not a recording to test if the BWC was working properly.

Charge No. 3: Violation of General Order Series 120.21, Attachment A, Part A-7, which states, “Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty. Three sustained adverse actions within a 12-month period upon charges involving misconduct, as provided in this section, shall be prima facie evidence of inefficiency. The adverse action charges need not be related.”

Specification No. 1: In that, following a review of your work history it was revealed that you have had three (3) prior sustained adverse actions within the past 12-month period; 847-22 May 8, 2023, and 674-23 & 809-23; both cases are pending a final disposition and your current case in which you are also facing Adverse action 043-2.

DRD #674-23

Charge No. 1: Violation of General Order Series 120.21, Attachment A, Part A-16, which states, "Failure to obey orders or directives issued by the Chief of Police."

Specification No. 1: In that, on August 16, 2023, you engaged in a vehicle pursuit that was initially authorized by your watch commander. However, after the pursuit lasted a prolonged period of time and entered into Virginia, three (3) separate officials, including the Watch Commander and the Field Commander, gave an order to terminate the pursuit. However, you willfully and knowingly ignored the orders, and continued pursuing the vehicle. This misconduct is further described in G.O. 301.03, Part II, Section A, Subsection 2, which states in part, "Members shall immediately terminate a pursuit when ordered by a department official."

Specification No. 2: In that, on August 16, 2023, while engaged in the pursuit, you were involved in a traffic crash with another vehicle. However, you failed to immediately notify the dispatcher and the monitoring official of the crash. In fact, you did not report you were involved in a crash until the pursuit concluded, with a significant delay. This misconduct is further described in G.O. 301.01, Part I, Section D, Subsection a., which states, "When a member is involved in an accident while operating his/ her assigned vehicle regardless of the damage, he/she shall immediately request an official to respond to the scene."

Specification No. 3: In that, on August 16, 2023, while engaged in a vehicle pursuit, your speed reached up to 103 mph in a 30-mph zone. This speed was clearly unsafe and dangerous. G.O. 301.03, Part II, C, 6, d, states: "Members shall operate department vehicles as emergency vehicles when engaged in pursuits and: Not operate department vehicles at speeds where they cannot control the vehicle, thereby endangering lives. Pursuing members shall monitor their speed and only travel at a speed that is justifiable based on the specific circumstances and conditions."

Charge No. 2: Violation of General Order Series 120.21, Attachment A, Part A-4, which states, "Willfully disobeying orders, or insubordination," which is defined as "The failure to obey directives or orders issued from a supervisory official, or showing disrespect to a supervisory official" (G.O. 120.21, Part III, Section 1, Subsection d.)

Specification No. 1: In that, On August 16, 2023, you willfully and knowingly disobeyed lawful orders from three (3) separate officials, including your Watch Commander and the Field Commander, to terminate the pursuit. After the order to terminate the pursuit was given, you continued to pursue the vehicle for over two (2) additional minutes with your emergency equipment activated, and then you deactivated your emergency equipment and continued to pursue the vehicle with your emergency equipment deactivated.

Specification No. 2: In that, On August 16, 2023, after your officials ordered the pursuit to be terminated, you stated out loud, “Fucking pussies, there’s no fucking traffic.” Your statement was recorded by your Body Worn Camera (BWC) and was obviously directed towards the officials that directed the pursuit to be terminated. Your statement was not only unprofessional, profane, and inappropriate, but extremely disrespectful of your officials.

Charge No. 3: Violation of General Order Series 120.21, Attachment A, 24, which states, “Any conduct not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving a failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force.”

Specification No. 1: In that, on August 16, 2023, while engaged in a vehicular pursuit, you stated out loud, “Wreck bitch, wreck,” and also sang, “Whatcha gonna do, whatcha gonna do when they come for you.” Your behavior was recorded on your BWC, and witnessed by your partner Officer Sangalan. Your behavior was unprofessional, inappropriate, and indicative of your attitude towards your duties and responsibilities. Your behavior was not only detrimental to your own reputation, but also to the reputation of the department, potentially undermining the trust of the community in the law enforcement.

DRD # 809-23

Charge No. 1: Violation of General Order 120.21, VI, A, 11, which states, “Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee’s or the agency’s ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.”

Specification No. 1: In that, on August 19, 2023, you were working in the 1300 block of U Street, Northwest, when you came into contact with Mr. Shaquques Johnson, and during this interaction you repeatedly used “fighting words” in an attempt to bait Mr. Johnson into a fight by saying, “I don’t know, come find out” and, “show me.” During this interaction, you repeatedly used the word “bitch” in public to respond to Mr. Johnson’s taunts, and

you told Mr. Johnson to go home and get an assault rifle. Additionally, you repeatedly challenged Mr. Johnson to punch you in the head, and presented your chin to Mr. Johnson hoping that Mr. Johnson would hit you and knock you unconscious. Finally, you told Mr. Johnson that he sounded “gay” twice, and you sarcastically drew a parallel between being gay and prison rape. You lacked professionalism during this exchange and you displayed conduct which was unbecoming of an officer of this agency.

Charge No. 2: Violation of General Order Series 120.21, Attachment A, Part A-24, which states, “Any conduct not specifically set forth in the order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force.”

Specification No. 1: In that, on August 19, 2023, you were working in the 1300 block of U Street, Northwest, in full view of the public exchanging dialogue with Mr. Johnson, which was unprofessional. You repeatedly used “fighting words” in an attempt to bait Mr. Johnson into a fight, and went back and forth with him with sarcasm and disrespect. You failed to maintain decorum with a member of the public as passersby observed your behavior. Therefore, your conduct was detrimental to the reputation and good order of the Department.

Charge No. 3: Violation of General Order Series 120.21, Attachment A, Part A-16, which states, “Failure to obey orders or directives issued by the Chief of Police.”

Specification No. 1: In that, on August 19, 2023, you were working in the 1300 block of U Street, Northwest, when you came into contact with Mr. Johnson, and during this interaction, you repeatedly used the word “bitch” in public to respond to Mr. Johnson’s taunts, and you told Mr. Johnson that he sounded “gay” twice, as you sarcastically drew a parallel between being gay and prison rape. This conduct was in violation of General Order 201.26, Part V, Section C, which reads: “All members shall: 2. Be courteous, civil and respectful to their superiors, associates, and others whether on or off-duty. They shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties. 3. Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.”

Charge No. 4: Violation of General Order Series 120.21, Attachment A, Part A-7, which states, “Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty. Three sustained adverse actions

within a 12-month period upon charges involving misconduct, as provided in this section, shall be prima facie evidence of inefficiency. The adverse action charges need not be related.”

Specification No. 1: In that, following a review of your work history it was revealed that you have had three (3) prior sustained adverse actions within the past 12-month period; 847-22 May 8, 2023, 021-23 February 6, 2023, and 674-23, which is pending a final disposition.

On May 1, 2025, and May 2, 2025, Employee appeared before a Trial Board Panel. He was represented by counsel and pleaded to these charges as follows:⁷

DRD #674-23, Charge No. 1, Specification No. 1; Not Guilty
DRD #674-23, Charge No. 1, Specification No. 2; Not Guilty
DRD #674-23, Charge No. 1, Specification No. 3; Not Guilty
DRD #674-23, Charge No. 2, Specification No. 1; Not Guilty
DRD #674-23, Charge No. 2, Specification No. 2; Not Guilty
DRD #674-23, Charge No. 3, Specification No. 1; Not Guilty
DRD #809-23, Charge No. 1, Specification No. 1; Not Guilty
DRD #809-23, Charge No. 2, Specification No. 1; Not Guilty
DRD #809-23, Charge No. 3, Specification No. 1; Not Guilty
DRD #809-23, Charge No. 4, Specification No. 1; Not Guilty
DRD #022-24, Charge No. 1, Specification No. 1; Guilty with an Explanation
DRD #022-24, Charge No. 2, Specification No. 1; Not Guilty
DRD #022-24, Charge No. 3, Specification No. 1; Not Guilty
DRD #043-24, Charge No. 1, Specification No. 1; Not Guilty
DRD #043-24, Charge No. 2, Specification No. 1; Not Guilty
DRD #043-24, Charge No. 3, Specification No. 1; Not Guilty

SUMMARY OF THE TESTIMONY⁸

On May 1, 2025, and May 2, 2025, Agency held a 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

1) Lieutenant Stephan Bigelow Jr. (“Lt. Bigelow”) - Tr. Vol. I. pgs. 30-59; 76-120

Lt. Bigelow is assigned to the Fourth Police District (“4D”) and has been employed by Agency for approximately four (4) years. He was Employee’s supervisor while assigned at 4D.

⁷ See Agency’s Answer at Tabs. 11 and 12.

⁸ Agency’s Answer to the Petition at Tab 11.

Regarding the incident that occurred on Georgia Avenue, Lt. Bigelow stated that in doing a use-of-force pursuant to an OPC complaint for this incident, he reviewed the video footage. He explained that based on the video, Employee flagged down several officers informing them that there were some individuals on Otis Place on Georgia Avenue blocking the sidewalk and he needed backup to go to that scene. Lt. Bigelow testified that Employee did not wait for his backup, instead, he flagged them down, then walked over to Otis Place on Georgia. He noted that as Employee walked in between the crowd, there was a citizen trying to get through the sidewalk. Employee walked through the crowd, "takes his hands, kind of forces his way through two individuals that were standing on the sidewalk, set one of the individuals off, made him very upset." Lt. Bigelow stated that it was at that point that Employee's back up started arriving on the scene. Lt. Bigelow asserted that Employee got into an argument with an individual who was becoming threatening towards Employee and Employee agitated the situation. Lt. Bigelow stated that Employee told the individual to "do something, do something," in the individual's face. Lt. Bigelow stated that he took that as Employee "trying to agitate a fight with the individual." He noted that Officer Kohn had to grab Employee and pull him back to de-escalate the situation, because it appeared that Employee was escalating the situation. Lt. Bigelow explained that Employee was speaking with two (2) individuals, and he stated to one of them that "'I'm not talking to you, I'm talking to your daddy.'" He basically told the other individual that the guy that was roughly his same age was his father, which I took as insult and instigation and escalation in that situation, which also made that individual upset. And on several occasions, it appeared that that crowd was ready to fight because of the words that he was saying." The officers on the scene tried to de-escalate the scene, but the individual was still very agitated. Tr. Vol. I. pgs. 30-32.

Lt. Bigelow affirmed that after reviewing the Body-Worn Camera ("BWC") footage, he had concerns about Employee's conduct. He explained that as officers, they are supposed to serve the public as well as deal with individuals that are difficult and he was concerned that Employee did not wait for his backup and there were approximately ten (10) individuals at the scene. Lt. Bigelow stated that given Employee's stature, from an officer safety issue, he felt it was not that important that Employee settle the situation without his backup. He explained that Employee is probably about 5'7" tall and weighs about 150 -160 lbs., but the individuals he was engaging with were about six foot, 250 lbs., with one of them weighing about 300 lbs. Tr. Vol. I. pg. 33.

Lt. Bigelow testified that the way Employee was talking to the individuals was concerning as it appeared Employee was trying to instigate a fight when his backup arrived. He explained that although a lot of backup showed up, the officers were outnumbered, and the officers could have gotten injured. Lt. Bigelow also stated that he was concerned with how Employee was antagonizing one of the individuals. He also cited that Employee's conduct on that day was not what he expected from his officers. He stated that they are expected to be professional and to not escalate situations, not to demean citizens, regardless of how annoying they are. Tr. Vol. I. pgs. 33-34. Lt. Bigelow confirmed that he received the OPC complaint and that the complainant described Employee's conduct on that day as being worse than it was on video. Lt. Bigelow affirmed that Employee engaged in misconduct as it related to the incident at Georgia Avenue. He restated that from an officer's safety standpoint, Employee could have gotten himself and his coworkers seriously injured by not waiting for backup and then escalating the situation. Lt. Bigelow noted that Employee made the incident worse as his words were

disrespectful to the citizens, such as him calling the individual's friend, his "daddy." He noted that those are usually words that are insulting and can lead to fights. He also noted that Employee challenged one of the individuals by telling them to "do something," and Lt. Bigelow took it to mean that Employee was challenging the individual to a fight. He affirmed that they were trained in de-escalation techniques, and he did not observe Employee engage in such technique on the day of the Georgia Avenue incident. Tr. Vol. I. pgs. 35, 37-38.

Lt. Bigelow affirmed that he did not investigate this incident, but Employee submitted a PD-119 for the incident. He further testified that while Employee stated in his PD-119 that he knew one of the individuals, he had a rapport with them and that they were joking, their actions on the scene were not that of knowing him or joking. Lt. Bigelow pointed out that one individual was very upset and was trying to fight Employee and that didn't seem like they had any kind of rapport or any kind of friendship. He asserted that nothing about the individuals' body language or speech indicated to him or any other reasonable officer that they were joking. Lt. Bigelow noted that they weren't smiling, and they had made threats towards Employee. Lt. Bigelow also confirmed collecting PD-119s from the other officers on the scene. He testified that Officer Kohn stated that he had to physically grab Employee and pull him back from the individuals he was engaging with. Tr. Vol. I. pgs. 35-37, 41-42, 46, 49-50. Lt. Bigelow confirmed that based on his observation, the only person that was yelling and screaming was Employee. Lt. Bigelow affirmed that he cleared Employee of the "use of force" allegation in this incident because the citizens were committing a crime and Employee had the right to travel through them. He cited that he did not find the use of force to be a misconduct. Tr. Vol. I. pgs. 39-42, 50-54.

Lt. Bigelow affirmed that he pulled an IS number for this incident because of the language Employee used towards the citizens. He asserted that he found Employee's language to be abusive, unprofessional, and it had to be addressed. He stated that Lieutenant Ford investigated the IS number for misconduct. Lt. Bigelow confirmed that as a supervisor, investigating this incident impacted his thoughts of Employee and he had concerns about supervising him going forward. He explained that his concerns were that Employee "... escalates the scenes, he makes them worse, he seems to have, like, a chip on his shoulder when he's encountering these people. He's being sarcastic and offensive, and it could lead to unnecessary uses of force, injury to other officers. His behavior was reprehensible." Lt. Bigelow noted that he did not have confidence in Employee as an officer because as officers, their role is to serve the citizens of the District of Columbia and Employee doesn't seem like he respects them, based on his actions as captured in the BWC video footage of the Georgia Avenue incident. Lt. Bigelow explained that Employee's conduct would impact his ability to do his job in that, the next time officers go to that scene, the citizens would likely be hostile or negative towards officers that had nothing to do with that particular scene. He testified that Employee's conduct "leaves a bad taste in their mouth and it affects the outcome of future interactions with those citizens." Lt. Bigelow cited that from a relationship with the community standpoint, he found the Georgia Avenue incident to be serious. Tr. Vol. I. pgs. 42-45.

Referring to Employee's PD-119 within Tab I, page 6, Lt. Bigelow affirmed that Employee noted in his PD-119 that "this same group of people that are there in this location every day, it's a chronic complaint by citizens, calling police for people selling drugs, blocking passage, and excessive noise." Lt. Bigelow confirmed that the BWC video footage showed a

citizen trying to get through the sidewalk, which was incommoding and a violation of the DC Code. Tr. Vol. I. pgs. 46-48.

Regarding the incident involving a vehicle pursuit that Employee was the driver, Lt. Bigelow stated that he was the Watch Commander that night. He testified that Employee came over the 4D radio zone stating that he had a suspect vehicle. Lt. Bigelow asserted that they had a string of about five (5) robberies and carjackings, one of which the suspect had fired at one of the victims, and Employee was able to get behind the vehicle. He stated that the pursuit happened on the midnight shift on the evening of August 15, 2023, into August 16, 2023. Lt. Bigelow affirmed that he authorized the pursuit, and he knew that Employee was the driver of the vehicle that saw the suspect's car. Tr. Vol. I. pgs. 76 -78, 102-104.

Lt. Bigelow testified that in addition to authorizing the pursuit, he requested "our Falcon, which is the helicopter units, they weren't working. Then I requested park police's helicopter unit. They also weren't working. So, we were having quite a bit of technical difficulties at that moment." Lt. Bigelow asserted that he also asked the dispatcher to try to get Prince George's County, Maryland to assist us with the pursuit. He noted that he also asked the dispatcher to assign a primary and secondary unit, and he was the supervisory unit out in the field at the time because he was in the field at the time. He affirmed that he was monitoring the radio traffic about the pursuit. Tr. Vol. I. pg. 79.

Lt. Bigelow asserted that he had given the directions to be informed of the traffic, the speed they were going at, and the conditions of the pursuit. He noted that Employee and his partner were not communicating that well during the pursuit, probably because of the speed and not seeing the signs at the time. Lt. Bigelow affirmed that he monitored the radio while the pursuit was going on. He affirmed that Employee was the driver and his partner who was the passenger was responsible for calling out things like location, and traffic conditions. He asserted that he had concerns because he was not getting all the information that he needed to determine whether to terminate the pursuit. Tr. Vol. I. pgs. 80, 84, 104 - 105.

Lt. Bigelow explained that he was concerned about the safety of the citizens. Lt. Bigelow also cited that there was a new Agency policy that went into effect July 20, 2023, and the current incident occurred less than a month later. He noted that the policy required getting a helicopter up and "backing off if we could get the helicopter up. There was a lot of new procedures involved with the new policy, and we had to constantly reassess the officers that are in the pursuit, are supposed to constantly reassess the pursuit to determine whether or not it's safe to continue the pursuit." Lt. Bigelow stated that Employee was the only unit in the pursuit. Tr. Vol. I. pgs. 80-81, 100-101.

Lt. Bigelow confirmed that he learned that Employee went into Prince Georges ("PG") County, Maryland briefly during the pursuit. He cited that Employee was in PG County for less than a minute. He noted that he did not authorize Employee to go to PG County. He also noted that it was not permitted under Agency's policy to leave the District without authorization. Lt. Bigelow further confirmed that Employee also went to Virginia during the pursuit. He asserted that he did not authorize that, and he decided to terminate the pursuit at that point. He stated that Employee and his partner didn't ask for permission, but they advised they were going into

Virginia. Lt. Bigelow cited that he was not aware of Employee's location at all times during the pursuit. He explained that "at one point, because they weren't giving the locations, we tried to have Prince George's County call out the locations, because they were having difficulty giving us where they exactly were. I tried to go to where they were. I couldn't figure it out. Like, every time they were in one location, the next time they would transfer over, they were considerably farther away from where they were." Lt. Bigelow affirmed that he terminated the pursuit at about 2:50 in the morning. Tr. Vol. I. pgs. 81-85, 116-117.

Lt. Bigelow asserted that based on his recollection, a total of three (3) command staff to include himself, Captain William, and Sergeant Kelly gave directives to Employee to terminate the pursuit. Tr. Vol. I. pg. 85. Lt. Bigelow stated that Employee did not terminate the pursuit despite the directives to do so. While he stated that he was unsure of the exact time frame Employee continued with the pursuit after it was terminated, Lt. Bigelow noted that it was probably a couple of minutes after the directives to stop the pursuit were issued. Lt. Bigelow explained that after Employee returned to the District, "Cruiser 28 reauthorized the pursuit once they came back into the District of Columbia." He cited that Employee and his partner resumed the pursuit at this point. Lt. Bigelow testified that while conferring with Sergeant Kelly and Cruiser 28, he voiced his "concerns that the chase was getting out of hand, we didn't have enough information, we're going into multiple jurisdictions. We needed to terminate the pursuit. We agreed, and I believe it was at 2:58ish, around there, terminated the pursuit the final time." Tr. Vol. I. pgs. 86 – 87, 110-112. Lt. Bigelow testified that when Employee engaged in that pursuit, he was obligated to "report his speed, the traffic conditions, notify if he's leaving the District ... If he gets into an accident, he's supposed to stop immediately and make notification that he was involved in an accident." Tr. Vol. I. pg. 87.

Lt. Bigelow noted Employee did not indicate during the pursuit that he got into a traffic accident. He confirmed that he subsequently learned from Sergeant Smith that Employee was involved in an accident during the pursuit. Lt. Bigelow testified that "We tried to get a statement from [Employee] to let us know where the accident occurred so we could go over there and see if anyone was injured, if there was any damage to property, or anything dealing with the general safety of the public. But he invoked Reverse Garrity and refused to give a statement." He noted that he never found out where the accident occurred. Lt. Bigelow explained that per Agency's policies on traffic accidents, "they need to notify an official in the upper suit. They need to stop immediately and report the traffic accident immediately." He affirmed that this policy also applied to minor traffic accidents. Tr. Vol. I. pgs. 88-89, 117 - 118.

Lt. Bigelow confirmed that he was responsible for the preliminary investigation of this pursuit. He asserted that as part of his investigation, he reviewed Employee and his partner's BWC footage to see the path of the pursuit and to provide an assessment of what happened. He also noted that he gave a brief synopsis of the pursuit and any issues he observed. Lt. Bigelow stated that upon review of the BWC footage, he was concerned by Employee's behavior during the pursuit. He explained that Employee "... told his partner to take her gun out. She took her gun out, had her foot on the dashboard, basically. And it was later confirmed that they were going about 103 miles-an-hour. From my time as a police officer, we've had suspects shoot themselves in the face while being pursued, because they got into a traffic accident. I don't want officers going that fast with their guns out. I think it's a very dangerous and unnecessary tactic

and I don't think he should have told her to do it.” Lt. Bigelow also asserted that he was concerned when “It was later learned that [Employee] was singing Bad Boys, the theme song from the TV show “Cops.” I thought that was very unusual. And I think that had something to do with them not communicating properly. He was distracted. He also screamed to the suspect -- not that the suspect could hear him -- but basically something to the effect of he wanted them to wreck...the car.” Tr. Vol. I. pgs. 89 – 92.

Lt. Bigelow confirmed that the cars were moving at a high rate of speed when Employee was screaming at the other vehicle to wreck. He explained that Employee’s desire for the other vehicle to wreck was concerning because it would have exposed the Department to liability if the BWC footage revealed that Employee was screaming at the other driver to wreck the vehicle. Lt. Bigelow could not recall if he took photos, conducted interviews during his investigation or if he got oral or written (PD-119) statements. Lt. Bigelow testified that based on his preliminary investigation, he concluded “that the pursuit was authorized initially, but I felt like it was an unauthorized pursuit toward the end of the pursuit when [Employee] continued to pursue it after he was told not to.” He stated that after his investigation, he completed a preliminary police report form as the watch commander, as well as pursuit form. Lt. Bigelow confirmed that he pulled an IS numbers for Employee. He explained that they are required to draw IS numbers for any pursuit. He asserted that the pursuit package is investigated by captains of the Police Department. Tr. Vol. I. pgs. 92- 94.

Lt. Bigelow testified that after watching the BWC footage, he found Employee’s behavior to be abnormal. He explained that “... you've got to be focused when you're in these pursuits. [Employee is] going 103 miles an hour, singing Bad Boys. At one point, he calls myself, from how I interpreted his statement, myself, Cruiser 28, and Sergeant Kelly, “fucking pussies,” I believe it was, on his body-worn camera. I mean, it may have been in the heat of the moment. I can get that. But it's unacceptable behavior. He's out of control.” He affirmed that he lost confidence in Employee after that incident. Tr. Vol. I. pgs. 94 – 95, 118-120.

Lt. Bigelow testified that Employee was involved in another incident where there was an individual who was on a rooftop and he was climbing on an electrical wire, and Employee was telling the individual to jump. Lt. Bigelow stated that “I think he said something to the effect of, “Jump, you pussy. You won't do it.” Something to that effect.” Lt. Bigelow asserted that Employee was involved in yet another use-of-force incident where he incited the member, and “he made some homophobic comments ... I don't recall exactly [what] he said.” Tr. Vol. I. pgs. 95 – 95.

Lt. Bigelow acknowledged that it was important for officers to comply with MPD's general orders and MPD pursuit policy. He explained that failure to comply could result in serious injuries, “citizens could be killed, he could be killed, his partner could be killed, the community can lose faith in us if somebody's seriously injured. He could also kill the suspects.” Lt. Bigelow testified that in his 18 years in the force, he had never been involved in a pursuit that was over a hundred miles an hour. He asserted that he had never heard of a pursuit with a speed of a hundred miles an hour on a street with a thirty mile-an-hour speed limit. He affirmed that it was dangerous to go a hundred miles an hour on such a street. He also affirmed that Employee’s conduct during this pursuit placed the public in danger. Tr. Vol. I. pgs. 96-99.

According to Lt. Bigelow, Employee "... was already involved in an accident. Again, we don't know where it was, but he couldn't control the vehicle, obviously, because he was in an accident. And he could have wiped out the suspect, rammed into them unintentionally. He could have drove into somebody's house, he could have driven the vehicle into somebody's house. All kinds of bad things could have happened by him not abiding by the policy." Lt. Bigelow confirmed that Employee put his partner in danger during the pursuit by "driving so recklessly at that speed, not stopping the pursuit after he was told to stop the pursuit. He put her in administrative issues as well." Lt. Bigelow noted that there was no major damage to Employee's vehicle after the accident. He affirmed that Employee continued on the pursuit. Tr. Vol. I. pgs. 98-99.

Lt. Bigelow acknowledged that it was dangerous to be involved in a pursuit without having the siren activated or without telling the watch commander or the dispatcher they are engaged in a pursuit. Lt. Bigelow affirmed that he was acting as the watch commander that night. He explained that he had authority over the pursuit, "... but Cruiser 28 is the field commander for the whole department and she out ranked me." He affirmed that Sergeant Kelly (Cruiser 28) was acting on Captain Williams' behalf. Lt. Bigelow affirmed that he stated in his report that the radio transmissions were not entirely clear from Employee's vehicle, but they were able to give their locations so they could monitor the pursuit. Lt. Bigelow affirmed that he noted in his statement of the incident that he terminated the pursuit at 2:52:55 because "There was continued difficulty with radio communications with the pursuing officers and Guardian was still monitoring the pursuit." Lt. Bigelow confirmed that the final directive to terminate the pursuit happened at 3:10 in the morning. He cited that it was not normal for three (3) officials to give directives for a pursuit and that authorization is typically from the watch commander. Tr. Vol. I. pgs. 100 – 101, 105 – 109, 112-113.

2) Lieutenant Kelwin Ford ("Lt. Ford") – Tr. Vol. I. pgs. 60 – 76

Lieutenant Ford has been assigned to Agency's Fourth District ("4D") for approximately three (3) years. He confirmed that he knew Employee and that he was assigned to investigate an incident that occurred on Georgia Avenue on August 12, 2023, involving Employee. Lt. Ford asserted that Lt. Bigelow investigated the use-of-force portion of this incident prior to his assignment to the matter. He noted that he had access to Lt. Bigelow's investigation when he conducted his investigation. Lt. Ford affirmed that he reviewed all the PD-119s and BWC footage collected by Lt. Bigelow. He testified that he also reviewed associated reports in the report managing system and other associated internal investigations. Lt. Ford noted that he collected PD-119s from other officers on the scene. Tr. Vol. I. pgs. 61-63.

Lt. Ford confirmed that he found that there was misconduct by Employee. He also found that Employee violated General Order 120.21, Part 6, 12 Section A, Subsection 11, Conduct Unbecoming an Officer. He cited to Employee's comment to Mr. Ferguson's face that "'do something,' then 'do something,' then 'do something,' in a loud tone" to support Specification No. 1, of this charge. Lt. Ford stated that officers should "remain courteous, civil, and respectful to their superiors, associates, and others, whether on-or off-duty, and they should require orally and attentive, in excess patience and discretion in the performance of duties(sic)." He affirmed

that Employee's statements were inflammatory and served no law enforcement objective or purpose. Tr. Vol. I. pgs. 64-67.

Lt. Ford asserted that General Order 201.26 requires officers to refrain from harsh, violent, coarse, profane, sarcastic, or insolent languages and they should not use terms resorting to name-calling, which might be interpreted as derogatory, disrespectful, or offensive, to the dignity of any person. He cited that Employee's conduct as observed during the incident at Georgia Avenue was in violation of this general order. Lt. Ford noted that he did not find Employee's statement that "I'm not talking to you, I'm talking to your daddy, I'm talking to your daddy, I'm talking to your daddy" to have a law enforcement objective or purpose. He affirmed that he found the statement to be a violation of MPD General Order 201.26 because he interpreted it to be derogatory or disrespectful to the dignity of any person. Tr. Vol. I. pgs. 66-68.

Lt. Ford confirmed that when the individual at the Georgia Avenue incident stated that "I'm going to sue," Employee's reply was "Okay, good luck, you can't afford a lawyer." He affirmed that he found Employee's statement to be a misconduct under the MPD General Orders because it did not have any law enforcement objective or purpose or any ability to de-escalate the situation that was occurring on Georgia Avenue. Tr. Vol. I. pg. 68.

Lt. Ford affirmed that he found the nature and seriousness of the Georgia Avenue incident to be significant because Employee's conduct was not conducive to the good order and discipline of the Metropolitan Police Department and did not fall in line with their ideals and visions for their officers. He cited that Employee's conduct had "a reflection on our department-at-large." He explained that "The public's perception of us can affect any officer that responds to any call for service on any particular day. And any one officer's conduct can change the public's opinion and view, and their response to us ultimately." Tr. Vol. I. pgs. 69-70.

When asked if the Georgia Avenue incident caused him to lose confidence in Employee, Lt. Ford stated that "I don't know [Employee] all that well. However, the conduct on that scene did give question to, I guess, his ability to handle such call for service or any future call for services." Lt. Ford affirmed that after the investigation, he submitted his recommendation to the Department and that he did not issue the notice of adverse action. Tr. Vol. I. pgs. 70-71.

Lt. Ford acknowledged that Employee stated during the investigation that it was a mistake to say 'do something,' to Mr. Ferguson and that "After watching my BWC footage, I know I should have handled the scene differently. I was quick to get angry." He affirmed that that would be something he would want and expect an officer to say in a situation like this, as this represents taking accountability and admitting a mistake was made. Tr. Vol. I. pgs. 73-74.

3) Captain Jeffrey Wade ("Cpt. Wade") – Tr. Vol. I. pgs. 121-220

Captain Wade has been a member of the Department for approximately 20 years. He has been a captain assigned to the homicide branch of the Criminal Investigation Division ("CID") for approximately seven (7) years. Prior to this role, he was a captain assigned to Sector Patrol at 4D. He noted that he interacted with Employee while in 4D. Cpt. Wade explained that he was

assigned to 4D from August 2023 until December of 2023, and Employee was under his command during that period. Tr. Vol. I. pg. 122, 134, 177-178.

Cpt. Wade recalled investigating the August 2023 pursuit involving Employee. He stated that he was assigned the investigation and he completed the entire investigation. He asserted that in investigating the pursuit, he obtained statements from members involved, the GPS tracks of all the vehicles involved, he reviewed BWC video footage of the incident from multiple members, the radio zones recordings of all the radio zones involved (both 7D and 4D) and the tag channels. Cpt. Wade stated that he reviewed all this information during his investigation. He asserted that he conducted additional interviews to obtain statements from members which were all documented in PD-119s. Tr. Vol. I. pgs. 123-125.

Cpt Wade testified that based on the BWC footage of the incident, he was concerned that Employee was not taking safety into account during the pursuit. He noted that “there were several points during the pursuit that I felt even though it was an authorized pursuit, it fell outside of policy, became dangerous, in addition to some statements that were made during the pursuit. My main concerns with pursuit is the fact that following multiple orders to terminate the pursuit, the evidence showed that he continued to pursue the vehicle.” Cpt. Wade cited that he was able to hear the multiple orders to terminate the pursuit from “a combination of the body worn camera footage as well as of the recordings of the 4D radio zone.” He affirmed that he was able to hear the order to terminate the pursuit from Employee’s partner’s BWC footage. Tr. Vol. I. pgs. 125-126.

Cpt Wade asserted that the pursuit overall lasted over 30 minutes, which was a very long period to pursue a vehicle through the streets of D.C. He also pointed to other safety concerns such as excessive speed during the chase. He noted that the speed during the chase was more than 100 miles an hour, both in the District of Columbia and Prince George's County, Maryland. Cpt. Wade testified that elongated periods of time in the city, specifically at high speeds, are dangerous because the city is populated regardless of the time of day, thereby exposing Employee, his partner, members, and visitors to danger. He affirmed that the speed limit for some of the streets was 30 miles an hour and the speed limit for the highway where the pursuit occurred was 55 miles an hour. Cpt. Wade confirmed that at some point during the pursuit, Employee’s partner stated that “[Employee] you're stressing me out.” Cpt. Wade asserted that this statement, along with Employee’s partner’s body language portrayed that the partner did not feel safe. He noted that it did not appear that Employee had full control of the vehicle due to the high speed. He confirmed hearing Employee’s partner say, ‘slow down’. Tr. Vol. I. pgs. 126-127, 129 – 135, 143 -148.

Cpt. Wade testified that he was also concerned about Employee’s statement during the pursuit “... to the effect of, “wreck” curse word, “wreck.”” Cpt Wade cited that despite knowing he was being recorded and during a pursuit, Employee displayed conduct that could potentially have had an unfavorable outcome to the department. Cpt. Wade stated that he was concerned about “... how it could be interpreted by members of the public if they were to see this during such a dangerous situation. ... it tells me that he may actually want them to wreck and injure themselves, which is totally unacceptable. And it also demonstrates somewhat a level of carelessness to me.” Cpt. Wade also stated that Employee was “singing a song associated with

the TV show Cops, and it just portrayed... it was not how the police department should be portrayed during that activity at all.” He cited that Employee’s behavior was very unbecoming of the police department at large. Cpt. Wade explained that Employee’s behavior was unacceptable to him, especially because he acted that way while actively engaging in a pursuit and he knew his BWC was activated. He affirmed that Employee’s behavior brought disrepute upon the department. He noted that Employee was the primary vehicle in the pursuit and he was later joined by about three (3) other vehicles in the pursuit. Tr. Vol. I. pgs. 127 – 128, 150-152.

Cpt. Wade acknowledged that he heard Employee tell his partner to get her gun out during the pursuit. He stated that he had concerns about this directive to get the gun out at that point in pursuit. Cpt. Wade explained that “At this point in the pursuit, the pursuit has just started. Obviously, we know what ... they're chasing the car for. However, at high speeds there is not any situation you could be safe in with a gun displayed unless there were extremely exigent circumstances, like being fired upon while you are in the car at that speed.” He noted that there was no evidence that Employee was being fired at. Tr. Vol. I. pg. 149

Cpt. Wade confirmed that he could hear the three (3) separate terminations of pursuit on the video and radio that he reviewed. He cited that the first termination of pursuit order came from Senior Sergeant William Kelly, who was the CID watch commander at approximately 2:49. He noted that the order came over the radio with “clear direction for ground units to fall back” because there was air support at the time. He affirmed that the air support was a PG county helicopter. Cpt. Wade testified that Agency’s policy on pursuit dictates that “to determine whether a pursuit is within policy or ... not within policy is whether there are other means to identify, apprehend ... And within the policy it specifically mentions that air support could be one of those means. So my take on that essentially is if there is air support that can adequately follow this vehicle, we should not have police cars actively in pursuit of it at that time.” Tr. Vol. I. pgs. 135-137, 152.

Cpt. Wade affirmed that at approximately 2:50, Lt. Bigelow also ordered that the pursuit be terminated. He confirmed that a few seconds later, Captain Williams ordered that the officers terminate the pursuit. Cpt. Wade noted that based on his review of Employee and his partner’s BWC footage, Employee did not stop the pursuit. He testified that Employee “continued operating the vehicle. First off, when a pursuit is terminated, you are supposed to essentially separate from the pursuit, pull over, note your mileage, things of that nature. He maintained his position behind the vehicle with his lights on and continued driving his vehicle, and ... he was very focused which, to me, indicated that he was still actively engaged in the pursuit.” Cpt Wade affirmed that Employee’s MPD vehicle was still moving at a high rate of speed for about two (2) minutes after the pursuit was called off. He asserted that it was concerning to him because it demonstrated that “... it didn't matter that there were concerns from supervisors on the police department, albeit three supervisors even, to terminate the pursuit. It seemed that at that point he was going to continue or was set on continuing the pursuit.” Cpt. Wade testified that he had no doubt that Employee was aware that the pursuit was terminated because after Captain Williams gave the order to terminate the pursuit, Employee stated “Why do they want to cut it now?” Cpt. Wade also affirmed that Employee’s partner was heard telling Employee that Lt. Bigelow had terminated the pursuit, to which Employee responded that “I heard him.” Tr. Vol. I. pgs. 137-139, 153-155, 159-161.

Cpt. Wade explained that the pursuit was initially terminated when it began to enter Virginia, about 20 minutes after the pursuit began. Cpt. Wade stated that "There was a clear order to fall back. The order was not followed. A clear order to cut the chase, the order was not followed, and then another clear order to cut the chase. It was at that point that the officials began giving reason why they cut the chase over the radio, and it was stated that ... the chase was terminated because they were in Virginia. The reason the chase was terminated didn't matter at that point. It was terminated. And that was that was the source of the confusion essentially, between the management ... and the supervisors." Cpt. Wade affirmed that based on his review of the BWC footage, Employee and his partner understood that the chase was terminated. He explained that Employee understood that the chase was terminated the first time because of "[a] couple things. The first thing is that after the first order was given, the dispatcher ... tried to communicate with Crime Patrol 409 which was the vehicle being operated by [Employee]. It said, 'Crime Patrol 409 do you copy?' He did not transmit back. When she said ... and this was directly following the first order to terminate ... she asked, '409 do you copy?' He did not respond back on the radio. However, on his body worn camera concurrent with that you can hear [Employee] say, 'Nope.' ... I interpreted it as he was comprehending the transmissions and ... did not intend to follow directions." Also, Cpt. Wade stated that "There was conversation between [Employee] and [his partner] about, 'Do they know that we're in D.C. or we're heading back to D.C.," which is kind of twofold. It clearly indicated to me that he was still in pursuit following the termination, and it seemed to me that they were trying to find reasons to continue to get it to become authorized again." Tr. Vol. I. pgs. 140-143, 152-153, 156-158, 199-200, 208-210.

Cpt. Wade stated that Employee at some point acknowledged the order to terminate the pursuit, turned off his lights, "But he still is operating the vehicle in what could be considered a pursuit manner. It appears as if he [is] still trying to stay with that vehicle. So in terms of actually terminating the pursuit, I would not say that qualifies as a termination at that point." Cpt. Wade explained what an officer is required to do to terminate a pursuit. He asserted that "So you need ... to eliminate any indication that you're behind that vehicle. To do this, you would pull off the side of the road, get from behind that vehicle. You cannot have any type of action from your vehicle that would indicate to a reasonable person that you're behind them, that you're actually pursuing them. And then you're supposed to ... mark your mileage, record your mileage and your location as a termination point as well." He affirmed that it was very dangerous for Employee to turn off the light sirens but continue the pursuit. Tr. Vol. I. pgs. 158 – 159, 166.

Cpt. Wade testified that they found out Employee's vehicle was in an accident from their review of the BWC footage at the end of the pursuit. He noted that the members then admitted that they saw at the termination of the pursuit that the vehicle had been involved in an accident. Cpt. Wade stated that he concluded that the accident occurred on Branch Avenue while Employee was making a turn. He affirmed that Employee and his partner did not notify MPD on the radio during the pursuit that there had been an accident as required by policy to make an immediate notification. Cpt. Wade asserted that their failure to immediately report the accident impacted Agency's ability to obtain any witness statements, the location of the accident etc. He affirmed that based on the BWC footage, Employee was aware that they had been in an accident. Cpt. Wade acknowledged that he stood by his statement in his investigation report that pursuits at any length are high-stress situations and they require a high level of focus by involved

members, therefore, it is not unreasonable for the members to not recall the exact location or circumstances surrounding a minor traffic crash during a 30- plus minute pursuit. He also affirmed that there was no evidence to support the notion that the accident was intentional. Tr. Vol. I. pgs. 161-165, 169, 186-188.

Cpt. Wade testified that Employee provided a PD-119 and it was followed up by an oral interview which was recorded on a PD-119. He asserted that Employee stated during the interview that he did not stop the pursuit because he did not clearly hear an order to stop. Cpt. Wade testified that in his opinion, the evidence contradicted that assertion. Regarding why he did not stop when he had the accident, Cpt. Wade testified that Employee said he was unsure of where it happened and that he was not fully sure that there was an accident until the termination of the pursuit. Cpt. Wade explained that "... while I could understand that, based on the reactions I saw, I believe from [Employee's partner], the bumper falling, I believe it to be an excuse not truth." Tr. Vol. I. pgs. 166 – 168. Cpt. Wade later noted that the bumper of Employee's vehicle did not fall off. He noted that the damage to Employee's vehicle was paint transfer, a flat tire after the pursuit had terminated as the vehicle came to rest, and scratches close to the front right corner of the vehicle. He cited that Employee's vehicle struck the suspect's car. Tr. Vol. I. pgs. 202, 214 -215, 219 -220.

Cpt. Wade testified that when he questioned Employee regarding his statement of, "Wreck, bitch, wreck," that was observed on the BWC, Employee's response was that "the suspect vehicle that he was chasing was playing a game with him. He was changing lanes. He observed him make an over correction, and he just made a spontaneous utterance. That was his reason for that statement. He did state that he did not want anyone to get hurt." Cpt. Wade confirmed that he took into consideration that an officer in a highly stressful situation such as a 30-minute-long pursuit would make a comment that in normal circumstances they wouldn't. Cpt. Wade asserted that Employee was questioned about why he was heard on the BWC singing the Bad Boys Cops song, and Employee stated that "... he was attempting to keep himself ... relaxed, not too anxious so that he could operate his vehicle and engage the pursuit in a safe manner." Cpt. Wade opined that he did not find Employee's explanation acceptable, but rather as an excuse. He confirmed that Employee acknowledged to him that it wasn't the most professional thing that he could have done. Regarding the statement "Fucking pussies. There's no fucking traffic" Employee made at the termination of the pursuit and captured on Employee's partner's BWC, Cpt Wade stated that Employee stated that "it was a general statement not directed at anybody. Just an expression of overall dissatisfaction with pursuit being called off ... or ... with the suspects getting away." Tr. Vol. I. pgs. 170 – 172, 189, 204.

Cpt. Wade affirmed that he concluded after his investigation that there were times when the pursuit was appropriate and warranted and there were also times where the pursuit was dangerous and should have been called off. Cpt. Wade testified that Employee was in violation of the pursuit policy, and the general order surrounding pursuits. He explained that Employee's speed, his disregard for safety and his disregard of the three (3) directives to terminate the pursuit were a violation of that policy. Cpt. Wade confirmed that he found that Employee was insubordinate when he failed to obey a direct order to terminate pursuit. Cpt. Wade cited that he sustained a charge of conduct unbecoming regarding Employee singing the 'Bad Boys Cops' song during the pursuit. He also stated he sustained an allegation of insubordination for

Employee's statement of "Fucking pussies. There's no fucking traffic". Cpt. Wade testified that it was clear that that statement was directed at the officials who terminated the pursuit and was a blatant disrespect towards MPD officials. Cpt. Wade asserted that he sustained a general order violation regarding the traffic accident because it was not immediately reported as per policy. He noted that he sustained a violation regarding the excessive speed. Tr. Vol. I. pgs. 173 – 177. Cpt. Wade testified that it was brought to his attention during the investigation that Employee was being investigated for other misconduct, but he was unsure of the specifics. Tr. Vol. I. pg. 178.

Cpt. Wade confirmed that Employee's conduct related to the pursuit was a serious offense. He cited the extreme safety risk to himself, his partner, the suspects, and the public, as an overwhelming reason why he thought the pursuit was a serious offense. Cpt. Wade noted that Employee's statements and songs during the pursuit "... was extremely unbecoming on the department... and... the overall insubordination involved and violation of pursuit policy when he continued to pursue is very troubling to me." Cpt. Wade testified that although it not uncommon for officers to curse like that, he "... found this situation different. He's involved in a very serious car chase that extended over minutes. Very dangerous. And the possibility of this pursuit being viewed by the public in kind of an after action type deal if something were to happen is extremely possible, and he knew his camera was on this entire time. And it felt to me that he didn't care. It shows recklessness and it also showed that ... his only intent during this pursuit was to keep pursuing." He stated that he found Employee's judgement to be severely questionable during the pursuit. Cpt. Wade asserted that as a manager, based on his investigation of the pursuit, he lacked confidence in Employee being on his own as a member of the MPD. He confirmed that none of the statements that Employee was charged for were broadcast over the radio. Cpt. Wade stated that from his perspective, he did not trust Employee to be a police officer on the streets. He cited that there was no potential for rehabilitation because he felt Employee's actions were intentional and not mistakes. Tr. Vol. I. pgs. 178 – 182, 185 – 186, 216-217.

Cpt. Wade affirmed that he was aware of officers involved in pursuits that were never at any time approved and were unjustified the entire time but kept their job. He noted that he was not aware of officers retaining their job in pursuits that ended in fatalities. Tr. Vol. I. pgs. 184 – 185. Cpt. Wade testified that for approximately 20 minutes, there was no air support, and it was just Employee and his partner on the pursuit, with other 7th District ("7D") officers involved. Tr. Vol I. pgs. 187.

4) Lieutenant Jarlath Cady ("Lt. Cady")– Tr. Vol. I. pgs. 221 -271

Lieutenant Cady has been assigned to 4D since 2018. He affirmed supervising Employee between 2018 and 2023. He stated that while they worked different shifts, Employee's shift "overlapped mine between the evening and the midnight shift." Lt. Cady confirmed that he was assigned to investigate an incident involving Employee that occurred on U Street. He explained that the misconduct stemmed from a use-of-force investigation that he was also assigned to wherein, while reviewing the BWC video, he discovered an interaction between Employee and a gentleman on U Street that was inappropriate. Lt. Cady stated that the use-of-force was handled separately from the misconduct investigation. Tr. Vol. I. pgs. 222 – 224.

Lt. Cady testified that prior to the use of force, Employee and three (3) other officers were assigned to the U Street corridor for a robbery suppression assignment, which was an overtime assignment after their shift or almost at the end of their shift. Their duty was to keep people in order on U Street. Lt. Cady stated that during that time, Employee and the three (3) other officers encountered a gentleman named Mr. Johnson on U Street. He explained that Employee had a couple interactions where Mr. Johnson began to threaten Employee. Lt. Cady cited that during the verbal back-and-forth, Employee made inappropriate statements about what Mr. Johnson was saying to him which included some homophobic remarks. He stated that Employee told Mr. Johnson to go get a gun and bring it back to U Street as well as other inappropriate language during the interaction with Mr. Johnson. Lt. Cady asserted that Mr. Johnson called Employee a bitch, and Employee used similar language back to him. He noted that the incident became heated, and Employee suggested that Mr. Johnson strike him in the head. Lt. Cady testified that Employee bowed down and placed his head “in front of Mr. Johnson in a way for him to just basically saying please hit me.” He stated that Employee basically said, “I double dog dare you to hit me in the head.” Tr. Vol. I. pgs. 224 – 226.

Lt. Cady stated that he found Employee’s statement back to Mr. Johnson about “come and find out” to be a very dangerous statement to make. He stated that he understood that as Employee was asking Mr. Johnson to approach him and try to take his gun from him. Lt. Cady testified that “... Mr. Johnson references an ARP on the video. And that's an assault rifle that's been miniaturized. It's basically a shorter stock, shorter barrel. So it's almost the size of a pistol. And Employee is telling him to go get one, essentially. I mean, it's that simple.” Lt. Cady confirmed that prior to telling Mr. Johnson to go get a firearm, Employee also called him a bitch. He noted that that was not appropriate communication from an officer to a civilian, even if the civilian first called Employee ‘bitch’. Lt. Cady later testified that while Employee did not call Mr. Johnson ‘bitch’, his use of the word ‘bitch’ was not appropriate. Lt. Cady confirmed that he had concerns about Employee’s homophobic remark as that was not an appropriate response to anything. He also noted that Employee’s overall tone, the back and forth, and the attack on Mr. Johnson’s sexuality was not an attempt to lower the temperature or an approved de-escalation technique. Lt. Cady cited that Employee escalated the situation. He asserted that Officer Tejeda, on the other hand, is seen attempting to separate and de-escalate the situation. He noted that Officer Tejeda is doing what a police officer would do with two people in the middle of the street about to fight. Lt. Cady testified that the other officers on the scene are seen separating Mr. Johnson from Employee. Tr. Vol. I. pgs. 227 – 233, 257-258.

Lt. Cady stated that he was concerned about Employee’s interaction with Mr. Johnson because Employee is “essentially just kind of melted down into just saying are you threatening me over and over and over again. And ... he's not in a good place.” He stated that as Mr. Johnson was walking away, Employee approached him and his voice was elevated. Lt. Cady noted that Employee’s use of his OC Spray was the use of force that he was investigating. He stated that he cleared Employee for the use of force because Mr. Johnson actions were threatening and he would have sprayed him, tackled and handcuffed him. Lt. Cady stated that Employee was not in control of himself and his emotions, which was very dangerous as it could have led to him making bad decisions that could cost someone's life, or him and his fellow officers getting hurt. Tr. Vol. I. pgs. 234 – 239.

Lt. Cady testified that he had a question-and-answer interview with Employee during the investigation in reference to the misconduct. Lt. Cady testified that Employee acknowledged that his statements were not appropriate and he described some of them as bluffs. He asserted that Employee said "... he was trying to, he described just he was interacting the way that Mr. Johnson was interacting with him. And he felt that that was an appropriate response to how Mr. Johnson was talking to him." Lt. Cady noted that MPD officers are not trained to mirror the behavior of the suspects that they encounter or to use homophobic words when talking to suspects. Tr. Vol. I. pgs. 239- 240.

Lt. Cady affirmed that he found that Employee engaged in conduct unbecoming an officer for specification 1 – fighting words. He stated that Employee invited "Mr. Johnson to come and approach him and have a fistfight..." Lt. Cady affirmed that he sustained specification 2 under this charge for using the word 'bitch' towards Mr. Johnson. He explained that "We don't talk to people like that. Not in our capacity as police officers, that's not appropriate." Lt. Cady noted that he sustained specification 3 under this charge regarding Employee's comment to Mr. Johnson to go home and get an assault rifle because "it's one of the wildest things I've ever heard during an investigation, that an officer invited someone to bring a gun on U Street at peak hours. I mean, doing that at any moment is crazy, but at that time of night it's not appropriate." Lt. Cady confirmed that he sustained specification 4 under this charge for Employee's contact with Mr. Johnson and Employee encouraging Mr. Johnson to punch him in the head because Employee is inviting a person to commit a crime, which is not what police officers do. Lt. Cady affirmed that he sustained specification 5 for Employee presenting his chin to Mr. Johnson, hoping that Mr. Johnson would knock him unconscious because its unsafe behavior, "he could get knocked out and his gun in unprotected. He's placing all of his fellow officers in jeopardy by placing himself in a position where he could get injured." Lt. Cady confirmed that he sustained specification 6 for Employee telling Mr. Johnson he sounded gay two times because "That language is not appropriate for a police officer to use in public." Lt. Cady affirmed that he sustained specification 7 regarding Employee drawing a parallel between being gay and prison rape because the language is inappropriate. Tr. Vol. I. pgs. 240 -244.

Lt. Cady noted that Employee did not offer any explanation that would mitigate his misconduct. Lt. Cady asserted that at that time, Employee may have been forced into the overtime detail. Lt. Cady asserted that he found Employee's conduct as seen on the BWC footage to be serious because they pose a risk to the public and Employee statement were not appropriate for a police officer and the MPD. He confirmed that this incident caused him to lose confidence in Employee's judgement and his ability to make good decisions. He stated that there have been times where he wouldn't put Employee on the street because he did not trust his judgment. Lt. Cady also stated that the sergeants and the officers felt uncomfortable working with Employee and this was conveyed by sergeants to management at different times. He stated that "... I don't think that he is able to control his emotions when he's presented into a stressful situation." Lt. Cady noted that this was not the first time he encountered Employee in a disciplinary setting. He referenced a matter were Employee suggested that a man jump off the building. Lt. Cady stated that he did the preliminary part of the investigation, but he did not conduct the actual investigation. Lt. Cady asserted that based off of his interactions with Employee, he did not think Employee had the ability to rehabilitate because of his continuous errors every time he has come in contact with Employee "... in reference to stressful situations

that require somebody to have a level head, and he doesn't have that level head.” Tr. Vol. I. pgs. 244-249, 267- 268.

Vol. II – May 2, 2025

5) Lieutenant Jon Pongratz (“Lt. Pongratz”) – Tr. Vol. II. pgs. 304 -349

Lieutenant Pongratz is assigned to 4D. He confirmed investigating a disciplinary matter involving Employee. He stated that based on the BWC footage that he reviewed, the incident involved Employee driving his personally owned vehicle (“POV”) and he was involved in an accident at 11 and U Street. Lt. Pongratz testified that after the accident, Employee got out of his POV and activated his BWC. He noted that the BWC captured Employee’s exchange with the driver of the other vehicle. Lt. Pongratz stated that there were three (3) Third District (“3D”) officers who were working overtime in the club zone and they heard the accident and came over and did an investigation. He cited that the officers determined that there were no injuries and the involved vehicles were drivable, so they move them out of the intersection. Lt. Pongratz asserted that the officers then asked Employee if he was on duty or off duty, Employee never answered them, and he subsequently deactivated his BWC. Tr. Vol. II. pgs. 304 – 306, 326.

Lt. Pongratz asserted that he was concerned about the fact that Employee was on duty at the time of the accident and didn't properly notify an official that he was involved in an accident. He noted that he was also concerned that Employee drove his POV while on duty, and the fact that Employee mislabeled the BWC footage. He explained that “the BWC was labeled, testing, instead of, like, as an MPD 10-50 or even an incident, no arrest. And then it was also mislabeled for the address where his accident was at 11 and U, and it -- and he had it labeled as 12 and U. And when he tagged his video, it was the following day.” Lt. Pongratz noted that he was not aware that the other officers that responded also labeled this incident as occurring on 12th and U. When asked if these officers too were attempting to deceive the Department or do something improper by labeling it 12th and U, Lt. Pongratz said ‘Maybe,’ but noted that he did not investigate that. Lt. Pongratz cited that the General Order required officers to label BWC footage at the end of their tour. He affirmed that Employee violated this GO. Lt. Pongratz testified that he was assigned to the investigation into Employee’s OC deployment on a citizen. He stated that this was the reason why Employee was ordered back to 3D to dock his camera and Employee was in route back to 3D when he got into the traffic crash at 11 and U. Lt. Pongratz stated that his investigation was focused on Employee’s driving of his POV and the BWC. Tr. Vol. II. pgs. 306- 309, 334.

Lt. Pongratz asserted that the GO prohibits members from driving their POV while on duty without authorization by an official. He stated that Employee violated this GO because he did not obtain authorization to use his personal vehicle on duty. He confirmed that Employee was detailed at the club zone on U Street on the day of the incident. Lt. Pongratz testified that it is up to the officer to decide how to get to the assigned location. He stated that officers can park in 3D, get a ride with another officer, walk, use their take-home vehicles, or park close to their assignment. Lt. Pongratz confirmed that for the club zone detail, Employee followed the policy by driving to work and parking by the detail if it was before his tour of duty. He asserted that Employee could have walked or gotten a ride with any 3D officer to the station to dock his BWC

or “he could have come over the radio and got that to get back to dock his camera... (sic) So, I mean, there were a couple of ways to do it.” Tr. Vol. II. pgs. 309 – 310, 322-324, 335-336.

Regarding the labeling of the BWC, Lt. Pongratz explained that the officer logs into “... evidence.com and then they are required to put in the date, the type of incident that it is, and ... whether it's a use of force or traffic stop or an arrest, and then after that the location, and then below that the CCN numbers, if there are any, or N/A if it's not applicable. And then the last line is, they get to choose ... a sub-category, whether it's a felony, a misdemeanor, a[n] incident no arrest, BWC testing, chain of custody ... there's several groups.” He noted that Employee provided a written statement wherein, he stated that “he was driving his POV because ... he was ordered to go back to the Third District in reference to the use of force investigation, and ... that the Districts don't really provide transportation, so he was just utilizing his own car to get back there. And then in reference to the labeling of his BWC, essentially he said, he didn't know why he labeled it the way he did and that he didn't mean to deceive, or he didn't intentionally mislabel his BWC.” Tr. Vol. II. pgs. 311-312.

Lt. Pongratz testified that he found that Employee drove his POV while on duty and got into an accident. He also noted that Employee notified Sergeant Mumtaz of the accident when he got to 3D. Lt. Pongratz asserted that Employee mislabeled the BWC as ‘testing’ and that Employee waited until the next day to label the BWC. Lt. Pongratz stated that “So, I believe that he intentionally mislabeled this, he didn't properly notify an official that he was involved in a 10-50, and it was done to just deceive and not notify his supervisor.” Lt. Pongratz explained that “... as soon as there are any kind of self-initiated police work, any type of contact with the community where it's going to be law enforcement ... [officers] have to activate their BWC.” Tr. Vol. II. pgs. 313-314.

Lt. Pongratz confirmed that the accident Employee was involved in was captured in the buffer area of the BWC video footage. He stated that he had a phone conversation with the driver of the other car involved in the accident who confirmed that he exchanged contact and insurance information with Employee and that everything was good. Lt. Pongratz confirmed that there was nothing hidden on the BWC regarding the accident or some other violation that would have been a motive for Employee to have deceived the Department by mislabeling his BWC. He later confirmed that it was his assessment that Employee’s motive to label the BWC as testing was to hide the GO violation regarding using a POV while on duty. Tr. Vol. II. pgs. 315 – 316, 334 – 335, 336-337.

Lt. Pongratz affirmed that he sustained the charge for failure to obey orders or directives for the use of vehicle violation. He also affirmed that he sustained the charge for conduct unbecoming. He stated that the charge was for the intentional mislabeling of the BWC as ‘testing’. Lt. Pongratz testified that he found the incident to be serious because it was a violation of the GO, deceptive, and untrustworthy, which is not something officers do. Lt. Pongratz stated that Employee was required to correctly label the BWC as a traffic crash, not as testing. He stated that “... the only thing I can think of for him doing that is to keep it hidden, not to tell anybody. Because he certainly didn't tell the officers on scene that he was on duty when they asked, he certainly didn't communicate that clearly with Sergeant Mumtaz, and he had more than enough time to properly label his BWC as an MPD traffic crash and not as testing.” Lt. Pongratz

confirmed that Agency has rules regarding driving a personal vehicle and labelling BWC footage which are clearly communicated to officers in training. He also confirmed that as a lieutenant, he continues to train officers on the rules and regulations of the Department. Tr. Vol. II. pgs. 316 - 318, 324-333.

Lt. Pongratz states that he worked with Employee for approximately six (6) months around July 2023, and that he had concerns about Employee's on-duty conduct. He noted that he just could not trust Employee's decision making. He explained that "when I first got to the Fourth District, I think it was within a week or two, I actually pulled him off the street and put him in the station. Hearing him on the radio, he sounded out of control, and I just didn't trust his judgement. And I was hearing stories about him while he was on duty, and then I was aware of the incident that, I think it was Lieutenant Nelson discovered, with, I think it was down on Georgia and Park Morton, where he had bumped into some of the ... citizens down there on the corner, so there was the problem with that... So, really to pull him off the street and put him in the station was... just to get things to calm down, so he was just away from that for a little while. ... I didn't think he was making good decisions, so ... I pulled him off the street and put him in the station for a little while, to see if that would help." When asked if he had any confidence in Employee's ability to work effectively as a police officer, Lt. Pongratz said "Not right now, no." He also noted that he did not have confidence in Employee's judgment, he did not trust Employee's judgement, he did not think Employee made good decisions and that Employee had the potential to be a danger to the force. Lt. Pongratz confirmed that he was concerned about Employee's honesty and truthfulness regarding this incident. When asked if he saw any potential for rehabilitation in Employee, Lt. Pongratz said 'No.' He explained that they pulled Employee off the street because he was having some issues with misconduct on duty. He noted that when they did that, Employee was still working overtime at 3D, and he had similar mislabeling situations and other misconduct investigations as well. He concluded that "So, no matter what we were trying to do to pull him away from, you know, getting into trouble, he ... just ... was getting into trouble." Lt. Pongratz noted that during his investigation, Employee did not offer any explanation that would mitigate his behavior or mention he was tired and exhausted. Tr. Vol. II. pgs. 318 -322, 337-338.

Employee's Case-in-Chief

6) Officer Joshua Cucci ("Ofc. Cucci") – Tr. Vol. II. pgs. 350 - 362

Officer Cucci has been employed by Agency for approximately ten (10) years and assigned to 4D. He stated that he has worked with Employee for about four (4) years. He testified that Employee was a good officer and he described a dog bite scene they encountered. He stated that while Employee was not assigned to the scene, he helped without putting anyone, including himself in danger. Ofc. Cucci noted that Employee worked well with his fellow officers and that he has never seen Employee hold a run. He asserted that Employee is "... always handling his PSA, and if he's not doing something in his PSA, he goes over to other PSAs and give[s] help. So I think ... he has a great work ethic as an officer. He's definitely someone you need on your team." Ofc. Cucci asserted that "the scenes I've been with [Employee] on, he was a professional. I have never seen it firsthand him being unprofessional with anybody." He stated that he's been in over twenty (20) but less than fifty (50) scenes with Employee. He noted

that he was not Employee's regular partner, and he confirmed that he was on the same scene as Employee, when "... we was (sic) doing backup to each other..." Tr. Vol. II. pgs. 350 – 354.

Ofc. Cucci stated that he was aware of the incident regarding the pursuit and the charge of conduct unbecoming against Employee. He affirmed that when a member of command staff terminates a pursuit, the pursuit should be terminated immediately. Ofc. Cucci stated that "... if they tell you to stop the pursuit, you stop, yeah." He agreed that stopping the pursuit meant turning off your lights, sirens, dropping back and not continuing to follow the car. Ofc. Cucci confirmed that driving 103 miles per hour on a 30-mile-an-hour street could be dangerous to the public, and a partner in the car. Tr. Vol. II. pgs. 355 – 357.

Regarding the conduct unbecoming charge, Ofc. Cucci noted that while on duty as an officer, he has never challenged another citizen to a fight or asked a citizen to hit his face or called a citizen a 'bitch' or 'gay'. Ofc. Cucci stated that "It's not appropriate, but at the same time, we're all human. We, you know, we do and react, and that's the reason why ABLE training exists." He agreed that the MPD GO provides that they are not allowed to use profane language and that the words 'bitch', and 'gay' are profane and discriminatory. Ofc. Cucci affirmed that MPD rules prohibit the use of a personal vehicle while on duty. Tr. Vol. II. pgs. 357 – 360.

7) Officer Rodgers Shipmon ("Ofc. Shipmon") – Tr. Vol. II. pgs. 363 – 372

Officer Shipmon has been employed with Agency for about six (6) years and is currently assigned to 4D. He stated that he worked with Employee for about one (1) year. He testified that Employee was a good officer, a good backup and that Employee was good to be around. Ofc. Shipmon asserted that Employee would back him up, he took initiative when they got on scenes, and he did whatever was needed or asked of him. Ofc. Shipmon testified that Employee seemed like he got along with everyone. He asserted that "It was always about business, what we needed to handle at the time, but nothing outside of the area." Ofc. Shipmon stated that he has been in approximately ten (10) scenes with Employee. He asserted that he would consider himself friends with Employee. Tr. Vol. II. pgs. 363 – 366.

8) Employee - Tr. Vol. II. pgs. 372- 557

Employee testified that he became an officer with Agency in 2020. He was assigned to 4D, mainly in the evening shift. He stated that in the week leading up to August 12, 2023, he was assigned to PSA 409 in Sector 3 and during that time, he worked his normal tour and volunteered to take a considerable amount of overtime which was catching up to him. Employee stated that he was having issues sleeping and he started calling off work a lot and having to go to the clinic for exhaustion. Tr. Vol. II. pgs. 373 – 374, 513.

Regarding the August 12, 2023, incident involving members of the public incommoding on a sidewalk, Employee asserted that it was one of the busiest PSAs in 4D with a lot of violent activities. He stated that he had memorized some people's faces, names, date of birth and the groups in the area. Employee testified that the issue of individuals incommoding in the area was a chronic one. He stated that he was familiar with the group, but not with Mr. Ferguson. He noted that while he knew everybody else there that day and they also knew him, he had never

seen Mr. Ferguson before. Employee cited that that block was a problem area and they got police calls every day. He stated that usually he would just drive through the area and tell them in a respectful manner that he got a call because they were blocking the sidewalk or something, they would acknowledge him in a respectful manner, and he wouldn't have to come back. Tr. Vol. II. pgs. 375-377.

Employee testified that when they arrived at the scene, there was a lady attempting to walk on the sidewalk, but she could not. He noted that he approached the group informing them they were blocking the sidewalk; hoping they would listen and clear the sidewalk. Employee stated that he tried walking through the group to demonstrate to them what he was talking about regarding them blocking the sidewalk. He noted that he did not attempt to use force or initiate any contact with any of these individuals. Tr. Vol. II. pgs. 378-380.

Employee stated that he regretted saying "do something" in response to Mr. Ferguson's threats. He explained that "Well, to tell you the truth ... I would've done some more things differently ... I'm sorry. At that point, I could either brush it off, or I could've made a lockup. If I had to be reincarnated at that moment, I think I would've brushed it off because ... I didn't want to make a lockup..." Employee agreed that the MPD GO does not permit the use of fighting words towards citizens in the District. He affirmed that other officers got into that situation and de-escalated it. Employee also affirmed that he escalated and ramped up that situation which was contrary to his training and obligations as an MPD police officer. Tr. Vol. II. pgs. 380 – 381, 385-386, 443 - 446.

Regarding Employee's use of the term 'daddy' to another individual on the scene, Employee cited that it was not professional. He stated that "... I'm not going to say it was right or anything like that, but when I said that ... I didn't mean to... hurt anybody's feelings or be insulting. I know it doesn't really look like that. But so, the backstory to that is, the person I was talking to, saying, oh, I'm talking to your daddy, his name is Mustafa. Again, somebody that I know, and he always said ... I'm not laughing because I don't think it's serious, but I ride with Officer Donald Green a lot, and he's a bigger guy in stature ... and I'm like five-eight. So that's what he always tells me. ... he always says that to me. He's like, oh, you're riding with your daddy, this is your daddy ... talking about Green like talking to me. So but, like ... I find that humorous when he says it to me, so I don't never take that personally. So, now, and the other big guy, I don't know his name, but I definitely know him. I'm familiar with him too, and he's sort of the leader. And he's actually really respectful. I respect him... And anyways, so he's a bigger guy in stature, and he's the leader of the group. And then you have Mustafa, who's always telling me that Green is my daddy. And ... so I sort of made the same joke when I'm talking to him ... not that the scene was a joke, but that particular comment ... that didn't come out of the blue if that makes sense. And I don't think for one minute he was offended by that. I really don't. Not by that. ... he's offended because I'm there to begin with, but I don't think the comment was ... because he says it to me, like, a million times a week, ... so that's the daddy comment." Employee stated that this was the only time an incident like the current one happened with this group. Tr. Vol. 381-385, 439 - 443.

Regarding the vehicle pursuit incident, Employee testified that he heard about the suspects over the radio, and he found their vehicle on Sherman Avenue after canvassing for him.

Employee stated that he got behind the suspect because he was parked at a red light. He noted that the suspect saw him before he could turn on his sirens and he went through the red light and started going. Employee asserted that “So I was like, okay, well, that's running a red light. So I flipped my lights on ... but I knew that was the car we were looking for, so I went ahead and called it out over the air.” Employee stated that at that point, he did not think management would authorize a pursuit because he had never seen that happen before, but to his surprise, the watch commander authorized the pursuit. Tr. Vol. II. pgs. 386-389.

Employee asserted that he told his partner to get her gun out during the pursuit because the suspects “... did some sort of maneuver where it looked like they were slowing down. So I figured, oh, they're about to bail out. And I heard that they had already shot at people. ... I remember that they were slowing down, essentially, so ... I was ready for that. And because I was driving, I'm expecting the worst. So they could either bail out and take off running, or they could ... jump out the car and start shooting back at us. And the only person that would be able to ... return fire or ... protect us would be my partner.” He also noted that at the beginning of the pursuit, he went over the radio to voice their location while he was driving. Employee stated that at some point, he asked his partner to manage the radio while he focused on driving. He noted that he asked his partner during the pursuit if she had on her seatbelt because he cared about her safety. He confirmed that the windows were down in his cruiser during the pursuit. Employee also noted that he had never been in a vehicle pursuit before. He affirmed that the pursuit took him into Maryland and Virginia. Tr. Vol. II. pgs. 389-392, 446-447.

Employee testified that the pursuit was a 30-minute-long adrenaline dump. He stated that it was one of the most intense moments of his life. When asked about the “wreck, bitch, wreck” comment that he made during the pursuit, Employee stated that “... regrettable is an understatement. It was a stupid comment. Definitely shouldn't have said it. I cringe when I hear it on the camera.” He explained that he made the comment at the point of the pursuit where the vehicle that he was pursuing was doing some kind of maneuver to evade or to shake him off. Employee cited that when he saw what they were doing, “I just blurted it out, like ... somebody who wasn't ... thinking calmly.” He noted that he did not want the people inside the vehicle he was pursuing to be harmed. Tr. Vol. II. pgs. 393- 394, 481-483.

Regarding Employee singing the ‘Cops’ song during the pursuit, he stated that “that is incredibly stupid on my part... I can't tell you how embarrassed I am, but yeah ... that was just some pressure being released in that moment.” When asked if he clearly heard on the radio that the pursuit was being called off prior to him saying ‘nope’, Employee replied “No, sir.” He noted that he could not hear the radio at that point with his windows down, the sirens on, and being focused on driving. Employee asserted that he did not remember saying ‘nope’ until after he reviewed the BWC footage. He noted that if he did say it, it was probably in response to something that the suspect's vehicle was doing and not as an act of insubordination. Employee cited that he did not also hear the second directive on the radio to stop the pursuit, and his partner did not say anything about stopping the pursuit either. Tr. Vol. II. pgs. 394 -397, 448, 483-485.

Employee testified that when he was heard on the BWC footage asking why they wanted to stop the pursuit, that was the first time he had any sort of hint that the pursuit might've been terminated, and that was coming from his partner. He stated that “I never heard it on the radio at

all, but coming from my partner; I believe she said, I think they said to cut it, and that's when I responded with why would they want to cut it now." Tr. Vol. II. pgs. 397-398, 449-456, 492-493.

Employee asserted that he went over the radio stating that they were still in D.C., that there was very little traffic; and that they were still behind the suspect's vehicle because "I wanted to get that message across the air. At the time ... the only indication that I was aware of ... a termination for the pursuit was coming from my partner... but she ... just sounded a little like it lacked confidence ... I think they said to cut it. And so, that's when I said why they want to cut it now? So, basically, I'm unsure of whether or not it was actually cut... and then also because nothing had really changed. I mean, I was focused on driving ... we're supposed to monitor for safety... There was ...was no more traffic, no pedestrians, nothing like that. ... I believe you can hear my partner saying that ... it was because we were in Virginia. And so, then it clicked on me, oh, but we're not in Virginia. We're not in Virginia anymore because ... I think we went to Virginia, and we were already back by this point... So, ... when she said that, I was like, oh, well, they need to know that we're actually in the District..." Employee stated that he wasn't sure that the pursuit was terminated after his partner said, "I think they cut it" so he did not turn off his lights, siren or fall back, he continued with the pursuit. Tr. Vol. II. pgs. 399-401, 457 -460, 492-493.

Employee affirmed that he could hear Lt. Bigelow come over the radio stating that the pursuit was terminated and Employee voiced his acknowledgement of that directive. Employee confirmed that he turned off his lights and sirens at that time. Employee further affirmed that Captain Williams stated that the pursuit was terminated because they were in Virginia. He noted that he stated that they were not in Virginia. Employee confirmed that Lt. Bigelow stated that CID-1 had terminated the pursuit and CID-1 immediately responded that they were authorizing the chase. He affirmed that with the pursuit reauthorized, he continued the chase. Employee confirmed that Lt. Bigelow announced that the pursuit was terminated and Employee stopped his vehicle within seconds. Employee stated that he was aware of Agency's pursuit policy on the night of the chase and that there were lots of changes going on. Tr. Vol. II. pgs. 401-404, 451.

Employee confirmed that his vehicle was operable throughout the pursuit. He stated that he realized for the first time after the pursuit ended that his right front tire was flat. Employee noted that the bumper did not fall off, got detached, and was not seriously damaged when he stopped the pursuit. He cited that he was involved in a minor car accident during the pursuit that resulted in paint transfer on the front left side of the bumper. He noted that he did not realize he was involved in the accident until at the end of the pursuit. Employee confirmed that after he realized at the end of the pursuit that he was involved in a minor accident, he notified Sergeant Smith. He stated that Sergeant Smith was at the scene where they pulled over after the pursuit. Tr. Vol. II. pgs. 404-406.

Employee confirmed that he made the statement "fucking pussies" when he got out of his vehicle and saw the flat tire. He affirmed that the statement was not captured on his BWC, it was not made over the radio and it was not directed at anyone on the scene. Employee explained that he was "...coming down off of an adrenaline high, and also some frustration and a little bit of relief ... that that was over with. But I was definitely frustrated that I couldn't catch those people." He stated that he respects his supervisors. Tr. Vol. II. pgs. 407-408, 475, 485-487.

Employee affirmed that he drove at a high speed during the pursuit. He asserted that "... for the speed that I was going, it was as safe as you could possibly be. It was fast and that alone is dangerous..." He agreed that he went 103 miles an hour on Branch Avenue, which is a 30 mile an hour street and that it was dangerous. Tr. Vol. II. pgs. 408-409, 477-481, 491.

With regards to the August 18th, rolling into the 19th, incident where Employee was working the club zone overtime, Employee noted that the overtime units are not given cruisers. He stated that they use their POVs to get to the overtime detail and park on the 1900 block of U Street. He affirmed that he never radioed for a ride from another officer. Employee cited that he's never seen officers walk to the overtime detail or just catch a ride with someone who's in a cruiser on their normal tour. He cited that while an officer from 3D could do that, it was impractical for an officer from another district to do that. Tr. Vol. II. pgs. 409 -411, 434.

Employee confirmed that he used his POV to get to the club zone overtime on the night of the incident. He affirmed that there was an OC spray incident at the very end of that detail which he reported over the radio. Employee asserted that Sergeant Mumtaz came to the scene, assessed the situation and ordered Employee to go dock his BWC at 3D so she could investigate. Employee stated he used his POV to get to 3D. He noted that he thought using his POV was reasonable and that he did not do so to violate Agency's General Order stating that officers are not permitted to use their POVs for official police business. Tr. Vol. II. pgs. 411-413, 433-435.

Employee testified that as he was driving to 3D, he had an accident with another car. Employee confirmed that he turned on his BWC when the accident happened. Employee affirmed that he exchanged insurance information with the individual from the other vehicle after the accident and he drove straight to 3D where he informed Sergeant Mumtaz that he was involved in an accident while driving his POV. When asked if he was trying to hide anything from the sergeant or trick the sergeant into thinking he was off duty at the time of the accident, Employee said 'No'. Tr. Vol. II. pgs. 414-415.

Regarding the charge about Employee mislabeling his BWC of that accident as testing, Employee noted that he was not intentionally trying to deceive the Department. Employee explained that "I believe, when I was going in the next day, I had a plethora of videos because of all the jumping around I was doing. I ... basically, I had to catch up on my BWC labeling. I had let a few lapse because of the overtime assignments and the regular tours ... that I was working. And so, when I went in, I had, like, a long list that I was going down, and I was trying to figure out what was what... what do you call it, filling out each block. And I think that was a relatively short video ... I might've had several videos that night, just like random things that turned out to be nothing. Anyway, long story short is I just think I overlooked it by mistake." Employee cited that "It would've cost me nothing to just put 1050. I don't know why I didn't. Well, I made an error ..." He agreed that he did not label his BWC testing at the end of the shift he was on, which was a violation of the general order that requires officers to label their videos at the conclusion of their tour. Tr. Vol. II. pgs. 416 – 420, 435 -439.

Employee testified that he had a full shift of work later that evening of August 19, rolling into August 20th. He stated that he also went to club zone almost 22 hours after the traffic accident which was when the incident with Mr. Johnson occurred. Employee testified that it

started with a citizen asking for help as the citizen and Mr. Johnson were walking up U Street. He stated that Mr. Johnson was following behind him and harassing him. Employee averred that they were at their fixed post in an alleyway when the citizen approached them and asked for help. He stated that this turned into a back-and-forth between Mr. Johnson and Employee. Employee cited that Mr. Johnson called him a 'bitch' at one point and Employee stated that he never called Mr. Johnson a 'bitch'. He noted that "I used it the same way I'm saying the word bitch right now." He noted that Mr. Johnson had called him a 'bitch', and he responded he did not feel like a 'bitch.' He stated that the GO prohibits him from calling others a curse word. Tr. Vol. II. pgs. 420-422, 494- 501.

Regarding Employee's comment to Mr. Johnson that he sounded gay, Employee testified that after Mr. Johnson made a couple threats at him, Mr. Johnson then said "I'm going to give it to your ass. Me, like an idiot, I made a very, very childish remark... I wasn't thinking about what I was saying... forgive me, but it was like a roast session, I guess. I was just trying to be quick and witty, even though ... it was not a good idea to do that." He agreed that calling Mr. Johnson 'gay' was offensive and impact his credibility and that of other officers, with the citizens of this District. Tr. Vol. II. pgs. 422 – 423, 502-504.

When questioned about him telling Mr. Johnson to go get a gun, Employee stated that "Yeah ... that was probably the worst thing I did, especially about the gun. That was probably the worst thing I did in my career probably. That was a crazy thing to say. ... being so far removed from it right now, I can't believe I said that. I know the mind state I was in when I said it, though, and I was just locked in. I was like ... whatever he was going to say, I was going to just try to one-up it, whatever it was. I wasn't going to do anything, but as far as verbalizing ... I was just in a zone. I got sucked into it like an absolute fool and dragged down to that level. And it was just whatever he said, I was going to say this. He said something else? Okay. I was going to take it to this level... it was very, very egotistical, very unprofessional, dangerous, too... I was angry, and I just had a lot of blinders up. I wasn't thinking clearly at all. At that moment, I got really, I got really, really angry." Employee asserted that looking back, there were lots of other things he could have said and that he should have realized that he was talking to a crazy and drunk person. Tr. Vol. II. pgs. 423 – 426, 504-509.

Employee testified that after the incidents in August 2023, he still patrolled the street for about a month and that during that time, he chilled out with the overtime, and he realized he was feeling better and he had been sleep-deprived. He explained that "after this week from hell, like I described it, I had been involved in a few ... major ... really stressful situations. And even before this week, I've been on a lot of stressful situations, and I handled them like I'm really proud of myself. ..." Employee asserted that he worked well in stressful situations and that his problem was anger and sleep deprivation. Tr. Vol. II. pgs. 429 – 432. 513-514. Employee agreed that he had two (2) prior sustained discipline, prior to the current four (4) incidents as well as corrective actions. He also noted that he had received notice of one (1) adverse action since August of 2023, stemming from a misconduct in 2020. Vol. II. pgs. 515 – 516.

Panel Findings⁹

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

1. [Employee] was appointed to the Metropolitan Police Department on January 21, 2020, and was assigned to the Patrol Services North, Fourth District.
2. On August 16, 2023, [Employee] and Britnee Sangalan were working the midnight tour of duty in the Fourth District with the call sign of Crime Patrol 409. They learned that a red Hyundai Elantra with possible tag number FY1982 had been involved in multiple crimes of violence in the area.
3. Shortly thereafter, while on routine patrol, [Employee] and Sangalan observed a red Hyundai Elantra bearing DC tag FY6481 traveling southbound on the 3200 block of Sherman Ave, NW at a high rate of speed.
4. [Employee], driving a marked police cruiser, activated his emergency equipment and attempted to stop the vehicle.
5. The driver of the vehicle continued to drive and refused to stop.
6. Lieutenant Stephen Bigelow, having knowledge of the recent violent crimes committed by suspects driving the red Hyundai Elantra, authorized a vehicle pursuit while monitoring radio transmissions.
7. [Employee] and Sangalan established themselves as the primary pursuit vehicle and pursued the suspect vehicle.
8. While engaged in the pursuit, [Employee] made statements such as “Wreck bitch, wreck,” and sang “Whatcha gonna do, whatcha gonna do when they come for you,” demonstrating inappropriate conduct.
9. During the pursuit, [Employee] was involved in a traffic collision but failed to report the incident immediately, delaying notification until after the pursuit concluded.
10. Throughout the incident, [Employee] exhibited reckless disregard for public safety by repeatedly exceeding the speed in excess of 100 mph. While traveling north on Branch Avenue in Temple Hills, MD, his vehicle’s GPS recorded a speed of 103 mph, despite the posted speed limit at that location being 30 mph.
11. At approximately 0249 hours, the pursuit continued over the 14th Street bridge into Virginia.
12. At approximately 0250 hours, CID-1 Sergeant William Kelly directed ground units to terminate the pursuit and allow PG County’s helicopter to continue tracking the vehicle. Simultaneously, Cruiser 400 Lieutenant Bigelow issued an order over the radio for all units to disengage. Shortly thereafter, Cruiser 28 Captain Sherrelle Williams also confirmed that she was terminating the chase. These directives were collectively issued within a span of one minute.
13. The Fourth District dispatcher transmitted over the radio, “Crime Patrol 409, do you copy?” to which [Employee] responded, “Nope.” This exchange was captured on his Body Worn Camera.
14. [Employee] continued to engage in the pursuit until again told by Cruiser 400 that the pursuit had been terminated. A total of two minutes and fifty-five seconds (2:55) had

⁹ Agency’s Answer to the Petition at TAB 12 (September 19, 2025).

passed from when CID-1 advised units to fall back, to the time that [Employee] turned off his emergency equipment.

15. Following this period, [Employee] deactivated his emergency equipment but continued the pursuit without authorization.
16. [Employee] also made profane and disrespectful remarks, including: "Fucking pussies, there's no fucking traffic," directed at supervisory officials, as recorded on his Body Worn Camera.
17. Officer Sangalan, who was present during the pursuit, witnessed these events firsthand.
18. Shortly after, CID-1 reauthorized the pursuit per Cruiser 28, but directed, "Ground units, fall back," while emphasizing, "Guardian has overwatch." Despite this directive, [Employee] continued pursuing the vehicle on the ground.
19. The pursuit was then terminated by Cruiser 400 due to safety concerns.
20. On August 19, 2023, [Employee] was on duty and working in the 1300 block of U Street, Northwest.
21. At approximately 2236 hours, Mr. Johnson initiated contact with officers and directed conversation toward [Employee]
22. When Mr. Johnson invited [Employee] to fight and inquired about his weapon, [Employee] responded, "I don't know, come find out."
23. Mr. Johnson continued to provoke [Employee], to which [Employee] responded with statements such as, "Do what you gotta do.", "I don't feel like a bitch.", "Show me.", These statements were made in direct response to Mr. Johnson's insults and further invitations to fight.
24. Mr. Johnson referenced "AR-Ps" and the limitations of [Employee's] vest. In reply, [Employee] challenged Mr. Johnson to "get a gun" and stated he would be "waiting."
25. After Mr. Johnson said, "Try me... I'm gonna give it to yo ass," [Employee] replied, "That sound gay." When Mr. Johnson mentioned he had just been released from prison and repeated sexually explicit threats, [Employee] responded, "Is that where you learned it from?"
26. The hostile verbal exchange between Mr. Johnson and [Employee] continued for approximately three minutes and ended when Mr. Johnson walked away.
27. Approximately 10 minutes later, Mr. Johnson returned while the officers were repositioning scout cars. [Employee] confronted Mr. Johnson about his body language and told him to "get out of his face" and "get out of the street."
28. A verbal argument ensued over the blocked roadway. [Employee] then made additional provocative comments, including: "All right, go ahead and swing. My head is right here. You gonna knock me out? Swing!", "I double dog dare you."
29. Approximately 20 minutes after the second encounter, another exchange occurred between [Employee] and Mr. Johnson, where Mr. Johnson kept threatening [Employee]. In response, [Employee] kept engaging Mr. Johnson and continued closing his distance between him and Mr. Johnson while increasing his voice stating, "What did you say you're going to do to me?"
30. Ultimately, this culminated in [Employee] deploying OC spray on Mr. Johnson, who then fled on foot.
31. On Saturday August 12, 2023, [Employee] was working the evening shift in a full uniform capacity with the call sign of Crime Patrol 409.

32. [Employee] flagged down several Fourth District officers to assist with stopping disorderly individuals who were seated in chairs obstructing the sidewalk in the 700 block of Otis Place NW, in violation of incommoding laws.
33. [Employee] approached the individuals, walked in the middle of the group, and stopped in front of Mr. Terry Ferguson and another unidentified individual and stated, "Y'all, this ain't going to work, I'm gonna give you all a nice warning. Y'all are blocking the sidewalk!"
34. [Employee] gestured with his hand for Mr. Ferguson and the other individual to move from the center of the sidewalk. He then placed his hands in front of him, forming a triangle, and forcefully moved between the two individuals by using his body to push through.
35. Mr. Ferguson braced himself and became visibly upset, yelling at [Employee], 'Do it again, and I'm gonna knock you out.' [Employee] responded, 'Do what again?' Mr. Ferguson then accused [Employee] of intentionally pushing through them on the sidewalk and threatened to punch him if he did it again.
36. Mr. Ferguson told [Employee] that he should have issued a verbal warning the first time. [Employee] responded that he had given multiple verbal commands to move.
37. [Employee] confronted Mr. Ferguson aggressively, repeatedly stating, "Do something then" on three separate occasions, thereby provoking a physical altercation. Officer Kohn from the Fourth District then placed his right hand on [Employee's] left shoulder and guided him away from Mr. Ferguson in an effort to de-escalate the situation.
38. After disengaging from Mr. Ferguson, [Employee] proceeded to argue with another individual on the scene, stating on three separate occasions, "I am not talking to you, I'm talking to your daddy."
39. The group of individuals began to clear the sidewalk after the other officers on the scene determined that no arrests would be made. As the officers prepared to leave, Mr. Ferguson stated, "I'm going to sue," to which [Employee] replied, "Ok, good luck. You can't afford a lawyer," before walking away. Mr. Ferguson then requested that an official respond to the scene.
40. On Saturday, August 19, 2023, [Employee] was working the Reimbursable overtime detail (RDO) in the Third District club zone, specifically the 1900 block of 9th Street N.W., in a full uniform capacity with the call sign Overtime 4. [Employee's] tour of Duty was 2330 until 0430 hours.
41. At approximately 0320 hours, [Employee] was involved in a Use of Force at 9th & U Street NW. (Incident Summary Number 23-003051).
42. [Employee] was directed to respond to the Third District station by Sergeant Mumtaz to dock his Body worn camera for review of the incident.
43. [Employee] drove his personally owned vehicle (POV) from the area of 9th & U Street NW back to the Third District station.
44. While enroute, [Employee] was involved in a traffic crash at the intersection of 11th & U Street NW at 0350 hours in which he activated his body-worn camera.
45. [Employee] exited his vehicle, walked to the front of his vehicle, ripped off his bumper, and threw it in the bed of his pickup truck.
46. Officer Medgar Webster Jr and his partner responded to the traffic crash scene to assist. Further investigation revealed that no one was injured at the scene, and the collision

caused only minor property damage. Officer Webster and his partner both asked [Employee] if he was on duty, and he replied What time is it? I'm off duty.

47. [Employee] was advised to exchange information with the other driver since he was in an off-duty capacity.
48. [Employee] responded to the Third District and advised Sergeant Mumtaz that he was involved in a traffic crash in his personally owned vehicle.
49. Sergeant Mumtaz stated that [Employee] Warren reported the incident after 0400 hours, and Sergeant Mumtaz assumed that the incident occurred while [Employee] was off duty.
50. [Employee] was fully aware that he was in an on-duty capacity when the traffic crash occurred and failed to ensure that he reported accurate information to the sergeant.
51. According to the Axon Evidence.com database, evidence shows that [Employee] mislabeled his body-worn camera for "Testing" regarding the traffic crash incident.

Upon consideration and evaluation of all the testimony and factors, as well as the relevant *Douglas* factors,¹⁰ the Trial Board Panel found as follows:

DRD #674-23, Charge No. 1, Specification No. 1: GUILTY – Tier 3 – 30 Day Suspension.
DRD #674-23, Charge No. 1, Specification No. 2: GUILTY – Tier 3 – 30 Day Suspension.
DRD #674-23, Charge No. 1, Specification No. 3: GUILTY – Tier 3 – 30 Day Suspension.
DRD #674-23, Charge No. 2, Specification No. 1: GUILTY – Tier 2 – 5 Day Suspension.
DRD #674-23, Charge No. 3, Specification No. 1: GUILTY – Termination – Termination.
DRD #809-23, Charge No. 1, Specification No. 1: GUILTY – Termination – Termination.
DRD #809-23, Charge No. 2, Specification No. 1: GUILTY – Termination – Termination.
DRD #809-23, Charge No. 3, Specification No. 1: GUILTY – Tier 2 – 5 Day Suspension.
DRD #809-23, Charge No. 4, Specification No. 1: GUILTY – Termination – Termination.
DRD #022-24, Charge No. 1, Specification No. 1: GUILTY – Tier 3 - 15 Day Suspension.
DRD #022-24, Charge No. 2, Specification No. 1: GUILTY – Termination – Termination.
DRD #022-24, Charge No. 3, Specification No. 1: GUILTY – Tier 3 - 15 Day Suspension.
DRD #043-24, Charge No. 1, Specification No. 1: GUILTY – Tier 3 - 11 Day Suspension.
DRD #043-24, Charge No. 2, Specification No. 1: GUILTY – Tier 2 - 1 Day Suspension.
DRD #043-24, Charge No. 3, Specification No. 1: GUILTY – Termination – Termination.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW¹¹

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,¹² 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

¹⁰ *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981).

¹¹ 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").

¹² 801 A.2d 86 (D.C. 2002).

statute gives OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.¹³ 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 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 Metropolitan Police Department and was the subject of an adverse action (termination); Employee is a member of a Union - Fraternal Order of Police (“FOP”), which has a Collective Bargaining Agreement (“CBA”) with Agency. The CBA contains language similar to that found in *Pinkard* and Employee appeared before an Adverse Action Panel on May 1, 2025, and May 2, 2025, for an evidentiary hearing. This Panel made findings of fact, conclusions of law and recommended that Employee be terminated for the current charges. Consequently, I find that *Pinkard* applies in this matter. Accordingly, pursuant to *Pinkard*, OEA may not

¹³ See D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

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 Adverse Action 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.

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

Pursuant to *Pinkard*, I must determine whether the Adverse Action 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.¹⁴ 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.¹⁵ But for the charges described in **DRD #809-23** – Charge No. 4, Specification No. 1; **DRD # 043-24** – Charge No. 3, Specification No. 1; and **DRD #022-24** – Charge No. 2, Specification No.1,¹⁶ I find that there's substantial evidence in the record to support the Trial Board Panel's finding for the remaining charges levied against Employee pursuant to **DRD #674-23**; **DRD #809-23**; **DRD # 022-24**; and **DRD #043-24**. Employee's misconduct was captured on BWC video footage. Additionally, Employee admitted to making the statements as heard on the BWC video footage. For example, Employee admitted to telling Mr. Fergusson to "Do something then, do something then, do something then." Employee stated that he regretted making that statement. Employee agreed that the MPD GO does not permit the use of fighting words towards citizens in the District. He affirmed that other officers got into that situation and de-escalated it. Employee also affirmed that he escalated and ramped up that situation which was contrary to his training and obligations as an MPD police officer. Employee also admitted to using the term 'daddy' towards a member of the public. However, he stated that "... I didn't mean to... hurt anybody's feelings or be insulting."

Furthermore, Employee affirmed that he drove at a high speed during the pursuit, and he agreed that he went 103 miles an hour on Branch Avenue, which is a 30 mile an hour street and that it was dangerous. Employee further admitted to making the "wreck, bitch, wreck" comment and he stated that "It was a stupid comment. Definitely shouldn't have said it. I cringe when I hear it on the camera." Employee admitted to singing the "Bad Boys Cop Song" during the pursuit. He explained that "that is incredibly stupid on my part... I can't tell you how embarrassed I am, but yeah ... that was just some pressure being released in that moment." Employee also affirmed that calling Mr. Johnson 'gay' was offensive and impacted his credibility and that of other officers, with the citizens of this District. Employee also admitted that he told Mr. Johnson to go get a gun. He asserted that "... that was probably the worst thing I did, especially about the gun. That was probably the worst thing I did in my career probably."

Additionally, there's evidence in the record to support the Trial Board's assertion that Employee mislabeled his BWC after the accident in his POV as 'testing'. Employee also stated that he used his POV to get to 3D while he was still on duty. Therefore, regardless of

¹⁴*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).

¹⁵*Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987).

¹⁶ These charges will be addressed below.

Employee's protestation to the contrary, and based on the record, I find that the Trial Board provided substantial evidence for the charges and specifications levied against Employee.

Regarding **DRD #809-23** – Charge No. 4, Specification No. 1; **DRD # 043-24** – Charge No. 3, Specification No. 1; and **DRD #022-24** – Charge No. 2, Specification No.1., while there's evidence in the record to support the Trial Board Panel's finding of repeated and well-founded complaints from Employee's superior officers, or others, concerning the performance of his police duty, or the neglect of duty, I find that the Trial Board Panel's findings are not supported by substantial evidence. General Order Series 120.21, Attachment A, 7 also requires three sustained adverse actions within a 12-month period upon charges involving misconduct, as prima facie evidence of inefficiency under this section. (Emphasis added).

For **DRD #809-23**, Charge No. 4., Specification No. 1, the Trial Board Panel asserted that "In reaching its determination, the Panel relied on a review of [Employee's] disciplinary history, which documented three prior sustained adverse actions within a 12-month period: DRD 847-22 (May 8, 2023), DRD 021-23 (February 6, 2023), and DRD 674-23 (pending final disposition)." (Emphasis added).

For **DRD # 043-24**, Charge No. 3, Specification No. 1, the Trial Board Panel asserted that, "Upon reviewing [Employee's] disciplinary history, the Panel confirmed that he had three prior sustained adverse actions—DRD #847-22, 674-23, and #809-23—all within a 12-month period. While two of the cases were pending final disposition, the cumulative history of sustained violations met the threshold of prima facie evidence of inefficiency under MPD policy." (Emphasis added).

For **DRD #022-24**, Charge No. 2, Specification No 1, the Trial Board Panel stated that "In reaching its determination, the Panel considered the documented disciplinary history of [Employee], which reflected a clear and repeated pattern of misconduct over a relatively short period of time. Specifically, the record showed four sustained adverse actions within a 12 month period—DRD #847-22 (sustained May 8, 2023), DRD #021-23 (sustained February 6, 2023), and DRDs #043-23 and #674-23, both of which remain pending final disposition but fall within the same disciplinary window." (Emphasis added).

General Order Series 120.21, Attachment A, 7, provides that, "Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty. Three sustained adverse actions within a 12-month period upon charges involving misconduct, as provided in this section, shall be prima facie evidence of inefficiency. The adverse action charges need not be related." (Emphasis added). Employee agreed during the Trial Board Hearing that he had two (2) prior sustained discipline, prior to the current four (4) incidents. Tr. Vol. II. pgs. 515 – 516. Additionally, the Trial Board Panel admitted that Employee had two (2) sustained adverse actions - DRD #847-22 (sustained May 8, 2023), DRD #021-23 (sustained February 6, 2023) and not the required three sustained adverse actions within the past 12-month period. The Trial Board Panel cited that it considered DRD #043-23, DRD #674-23, DRD #809-23 and DRD #022-24 (which were pending before the Trial Board Panel) in support of this Charge. Consequently, I find that because these four (4) adverse actions - DRD #043-23, DRD #674-23, DRD #809-23 and DRD #022-24 were

pending before the Trial Board Panel and had not been sustained, they do not meet General Order Series 120.21, Attachment A, 7, requirement of Three sustained adverse actions within a 12-month period upon charges involving misconduct. (Emphasis added). Accordingly, I conclude that the Panel has not met its burden of substantial evidence for **DRD #809-23** – Charge No. 4, Specification No. 1; **DRD # 043-24** – Charge No. 3, Specification No. 1; and **DRD #022-24** – Charge No. 2, Specification No.1.

2) *Whether there was harmful procedural error*

Pursuant to *Pinkard* and OEA Rule 634.6, the undersigned is required to make a finding of whether or not MPD committed harmful error. OEA Rule 634.6 provides as follows: “notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action.” Here, the parties do not allege any harmful procedural error in this matter.

3) *Whether Agency’s action was in accordance with law or applicable regulation*

Employee pled ‘Guilty with an Explanation’ for **DRD #022-24**, Charge No. 1, Specification No. 1. Additionally, as noted above, I find that the record does not support a charge under General Order Series 120.21, Attachment A, 7¹⁷, as stated under **DRD #809-23** – Charge No. 4, Specification No. 1; **DRD # 043-24** – Charge No. 3, Specification No. 1; and **DRD #022-24** – Charge No. 2, Specification No.1. Employee did not have three sustained adverse actions within a 12-month period upon charges involving the current misconduct. (Emphasis added). Accordingly, I conclude that Agency has not met its burden of proof for **DRD #809-23** – Charge No. 4, Specification No. 1; **DRD # 043-24** – Charge No. 3, Specification No. 1; and **DRD #022-24** – Charge No. 2, Specification No.1. As such, Agency cannot rely on these charges to discipline Employee. Nonetheless, I find that there is substantial evidence in the record to support the remaining charges in the record.

Whether the Penalty was Appropriate

Agency asserts that its consideration of penalty met the standard in *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). It cites that the Trial Board Panel conducted a full examination of all the *Douglas* factors and that OEA should defer to its reasonable decision to terminate Employee. It states that Employee’s termination was a reasonable exercise of managerial discretion, therefore, his termination should be upheld. Employee on the other hand argues that by electing to terminate him, Agency failed to properly analyze and weigh the *Douglas* factors. Employee avers that Agency failed to reasonably apply the *Douglas* factors to the evidence in the record, accordingly, the penalty of termination should be reversed.

¹⁷ “Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty. Three sustained adverse actions within a 12-month period upon charges involving misconduct, as provided in this section, shall be prima facie evidence of inefficiency. The adverse action charges need not be related.”

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).¹⁸ According to the Court in *Stokes*, OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalty; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. An Agency's decision will not be reversed unless it fails to consider relevant factors or the imposed penalty constitutes an abuse of discretion.¹⁹ Here, Agency presented evidence that it considered relevant factors as outlined in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), in reaching the decision to terminate Employee.²⁰ Specifically, the Trial Board Panel provided a thorough analysis of the *Douglas* factors with its findings in this matter. The *Douglas* factor analysis included in the record demonstrates that Agency considered all factors in imposing the penalty of termination in this matter and the record evidence does not establish that the penalty of termination constituted an abuse of discretion.

Regarding **DRD #022-24**, Charge No. 1, Specification No. 1 and Charge No. 3, Specification No. 1, Employee argues that even if the Board's guilty finding was supported by evidence, the penalty of 15 Day Suspension for each of these charges is not supported by substantial evidence. Employee explains that under General Order 120.21, Attachment A, Part B (Table of Penalties Guide), Conduct Unbecoming is "a non-categorized offense." Employee cites that a Tier level 3 offense includes a verbal altercation with a co-worker or supervisor on a crime scene in front of civilians while a Tier Level 1 or 2 offense involves the use of unprofessional language. Employee contends that the Trial Board Panel failed to articulate why it considered **DRD #022-24**, Charge No. 1, Specification No. 1 and Charge No. 3, Specification No. 1 as a Tier 3, rather than a their 2 or less offense. Employee states that while he used unprofessional language in a stressful situation, it did not rise to a Tier level 3 offense. I disagree with Employee's assertion that his misconduct should have been categorized as a Tier 2 or lesser tier offense. The Table of Penalties Guide provides examples of penalty levels for non-categorized

¹⁸ See also *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

¹⁹ *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C.Reg. 352 (1985).

²⁰ In *Douglas v. Veterans Administration*, the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows: (1) the nature and seriousness of the offense, and its relation to the employee's duties, 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.

offenses. Specifically, the Table of Penalties Guide lists “Rude or Unprofessional (including inappropriate language toward citizen)” under Tier level 3. There is substantial evidence in the record to support the Trial Board Panel’s finding that Employee was rude and used unprofessional language towards Mr. Fergusson and another citizen. The presumptive penalty range for a Tier 3 offense is 11 - 30 Day Suspension. Therefore, I conclude that Agency correctly classified these charges as a Tier 3 offense, and its chosen penalty of 15 Day Suspension for each of these charges is within the range allowed by law, regulation, and any applicable Table of Penalties.

For **DRD #674-23**, Charge No. 1, Specification No. 1, Employee argues that the penalty of 30 Day suspension is not supported by substantial evidence. Employee explains that Agency failed to present evidence that he willfully and knowingly ignored the orders of three (3) separate officials to terminate the pursuit. Employee maintains that he and his partner did not clearly hear and comprehend the orders issued over the radio. Employee agreed during the Trial Board Hearing that his partner told him the pursuit had been terminated, but he continued the pursuit claiming that his partner “ ... just sounded a little like it lacked confidence ... So, ... when she said that, I was like, oh, well, they need to know that we're actually in the District...” The Trial Board Panel classified this cause of action under Tier level 3, which carries a penalty range of 11 - 30 Day Suspension. Therefore, I conclude that the Trial Board Panel’s chosen penalty of 30-Day Suspension for **DRD #674-23**, Charge No. 1., Specification No. 1 is within the range allowed by law, regulation, and any applicable Table of Penalties.

Regarding **DRD #674-23** Charge No. 1., Specification No. 2, Employee claims that he was not aware of the minor accident during the pursuit and that he reported the accident to an official immediately he discovered the damage to his cruiser after the pursuit. Cpt. Wade affirmed that based on the BWC footage, Employee was aware that they had been in an answer. Moreover, the record supports Agency’s assertion that Employee was aware of the accident when it happened, but he failed to immediately report the accident. Accordingly, I find that Agency had substantial evidence to charge Employee with this specification. Employee does not dispute that his conduct was a Tier level 3 offense. Furthermore, pursuant to the Table of Penalties Guide, the penalty range for a Tier level 3 offense is 11 - 30 Day Suspension. Consequently, I find that the Trial Board Panel’s chosen penalty of 30-Day Suspension for **DRD #674-23**, Charge No. 1, Specification No. 2 is within the range allowed by law, regulation, and any applicable Table of Penalties.

For **DRD #674-23** Charge No. 1, Specification No. 3, Employee avers that other MPD members who were involved in the same pursuit as Employee and allegedly engaged in the same excessive speed during the same pursuit but were merely issued PD750 corrective actions in response. The record supports Employee’s assertion that other officer involved in this pursuit did receive PD 750 corrective actions, whereas Employee received a 30 Day suspension.

With respect to disparate treatment, the OEA Board in *Barbusin v. Department of General Services*,²¹ cited that,

²¹ OEA Matter No. 1601-0077-15, Opinion and Order on Petition for Review (January 30, 2018).

An employee who raises an issue of disparate treatment bears the burden of making a *prima facie* showing that he or she was treated differently from other similarly-situated employees. In proving a claim for disparate treatment, an agency must apply practical realism to each disciplinary situation to ensure that employees receive equitable treatment when genuinely similar cases are presented. To establish disparate penalties, an employee must show that there is “enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to determine that the agency treated similarly-situated employees differently.”²² If such a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue.

OEA has further held that, to establish disparate treatment, an employee *must* show that he worked in the same organizational unit as the comparison employees. They *must* also show that both the petitioner and the comparison employees were disciplined by the same supervisor for the same offense within the same general time period (emphasis added).²³ Further, “in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty.”²⁴ (Emphasis added). An employee must show that there is “enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to determine that the agency treated similarly-situated employees differently.”²⁵ If a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue.²⁶

Here, Employee and the comparator employees were involved in the same pursuit, during the same general time period, and they had the same supervisors. Consequently, I find that these comparator employees are similarly situated to Employee. I further find that Employee has established a *prima facie* showing of disparate treatment and Agency now has the burden to establish a legitimate reason for imposing a different penalty on the employee raising the issue.

The Trial Board Panel in the instant matter stated that “In reaching a determination on Specification No. 3, the Panel relied on the testimony of Lieutenant Bigelow, Captain Wade, and GPS data, which recorded [Employee’s] vehicle reaching speeds of 103 mph in a 30-mph zone during the pursuit. The Panel found that such excessive speed—more than three times the posted limit—was inherently dangerous and unjustifiable under the conditions observed. General Order 301.03 clearly mandates that officers engaged in pursuits must monitor their speed and operate department vehicles in a manner that does not endanger lives or compromise control of the vehicle.” Additionally, Employee appealed the Trial Board Panel’s decision to the Chief of Police and his appeal included his disparate treatment argument, which was considered and

²² *Boucher v. U.S. Postal Service*, 118 M.S.P.R. 640 (2012).

²³ *Mills v. D.C. Department of Public Works*, OEA Matter No. 1601-0001-09, Opinion and Order on Petition for Review (December 12, 2011).

²⁴ *Metropolitan Police Department v. D.C. Office of Employee Appeals, et al.*, No. 2010 CA 002048 (D.C. Super. Ct. July 23, 2012); citing *Social Sec. Admin. V. Mills*, 73 M.S.P.R. 463, 473 (1991).

²⁵ *Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15, Opinion and Order on Petition for Review (January 30, 2018) (citing *Boucher v. U.S. Postal Service*, 118 M.S.R.P. 640 (2012)).

²⁶ *Id.*

denied. Specifically, the Chief of Police noted in their response that Agency considered the totality of the circumstances of Employee and each of the comparative employees. Agency cited that Employee's partner was not driving the cruiser. It also avers that the other comparator employees immediately terminated their pursuits when ordered, leading to their lessened penalties, while Employee did not terminate his pursuit.

Citing to *Singh v. U.S. Postal Service*²⁷, the OEA Board in *Employee v. Metropolitan Police Department*²⁸, noted that the Merit Systems Protective Board ("MSPB") in *Singh* held that the proper inquiry for a disparate treatment analysis is whether an agency knowingly treated employees differently "in a way not justified by the facts, and intentionally for reasons other than the efficiency of the service." The record does not establish that Agency knowingly treated Employee in a way not justified by the facts, and intentionally for reasons other than the efficiency of the service. Accordingly, I find that Agency has established a legitimate reason for imposing a penalty of 30-Day Suspension on Employee. Moreover, even assuming Employee had a valid disparate treatment claim, relying on *Singh*, the OEA Board highlighted that a finding of disparate treatment is not outcome-determinative as a 30-Day suspension is within the range permitted under General Order 120.21, Part B (Table of Penalties).

For **DRD #674-23**, Charge No. 2, Specification No. 1, Employee contends that this charge is identical to DRD #674-23, Charge No. 1, Specification No. 1, and that the Trial Board Panel never articulated why DRD #674-23, Charge No. 1, Specification No. 1, resulted in a much more substantial penalty than **DRD #674-23**, Charge No. 2, Specification No. 1. Employee argues that the disparity in penalty recommendation for the same conduct renders the Trial Board Panel's decision internally inconsistent. Employee concludes that if this charge is upheld, the appropriate penalty is a 5 Day suspension as determined by the Panel. I find that Charge No. 1, Specification No. 1, and Charge No. 2, Specification No. 1 point to two (2) separate General Order violations - General Order Series 120.21, Attachment A, Part A-16 and General Order Series 120.21, Attachment A, Part A-4, respectively. Pursuant to the Table of Penalties, this charge falls under Tier level 2, and the penalty range for Tier level 2 is 1 - 5 Day Suspension. Employee concedes that the Trial Board Panel's selected penalty of 5 Day suspension for this charge is appropriate. Consequently, I conclude that Agency's chosen penalty is within the range allowed by law, regulation, and any applicable Table of Penalties.

Regarding **DRD #674-23**, Charge No. 3, Specification No. 1, Employee argues that Agency failed to provide any evidence that his statement "wreck, bitch, wreck" and his singing of the "Bad Boys Cop" song which was captured on his partner's BWC during the pursuit resulted in any detrimental impact to the reputation and good reputation order of the MPD. Employee asserts that there was no evidence presented during the Trial Board Hearing that these private comments, which were never revealed to the public, had any impact on the reputation and good order of the MPD. Employee further expressed remorse for his behavior. Additionally, Employee explained that 'conduct detrimental' is a non-categorized offense. Employee cites that his conduct falls under Tier level 1, specifically, "Rude or Unprofessional – incidental profanity with no complainant" and not a Tier level 4 offense as Agency cited. Employee cites that his

²⁷ 2022 M.S.P.R. 15 (May 31, 2022).

²⁸ OEA Matter No. 1601-035-25, Opinion and Order on Petition for Review (April 23, 2026).

conduct is nowhere as egregious as having inappropriate contact with a victim, which is the example of a Tier level 4 offense under the Table of Penalties Guide. Employee states that hypothetical harm that might have resulted from these isolated private remarks never materialized in any demonstrable way. Thus, Employee asserted that the Trial Board Panel's decision to classify the misconduct in **DRD #674-23**, Charge No. 3, Specification No. 1 as a Tier level 4 offense is not supported by evidence and is directly contradicted by the Table of Penalties.

The Trial Board Panel asserted that "In reaching a determination on Specification No. 1, the Panel relied on the testimony of Lieutenant Bigelow and Captain Wade, as well as physical evidence, including body-worn camera (BWC) footage from [Employee] and Officer Sangalan's BWC footage clearly captures [Employee] making a statement directed at the vehicle in front of him, which the Panel found to be *inappropriate and unprofessional*, falling short of the standards expected of a Metropolitan Police Department member. Additionally, the Panel did not find [Employee's] explanation—that singing 'Cops' theme song was a method of stress relief or a way to remain calm—credible. The BWC footage depicts [Employee] singing in a manner that suggests he was taking pleasure in the circumstances, rather than attempting to manage stress." The undersigned finds that there is substantial evidence in the record to support the Trial Board Panel's finding that Employee's comment and song were *inappropriate and unprofessional*, falling short of the standards expected of a Metropolitan Police Department member. (Emphasis added). However, pursuant to the Table of Penalties Guide, I must agree with Employee that his behavior fits within Tier level 1 offense – "Rude or Unprofessional - Incidental profanity with no complainant" Or Tier level 3 – "Rude or Unprofessional (including inappropriate language toward citizen)." There's testimony in the record to suggest that Employee's comments were directed towards the vehicle he was pursuing. Additionally, Agency did not receive any complaints about the comments from Employee's partner since it was made in a private space with just Employee and his partner present. The penalty range for a Tier 1 offense is 'corrective action' while that for a Tier 3 offense is 11 - 30 Day Suspension. Accordingly, I find that the penalty of termination for **DRD #674-23**, Charge No. 3, Specification No. 1 is excessive.

Employee argues that **DRD #043-24**, Charge No. 1, Specification No. 1, is not supported by substantial evidence. The Trial Board Panel asserted that "In reaching its determination, the Panel relied on the testimony of Lieutenant Pongrats, and body-worn camera (BWC) footage that fully captured the incident. The evidence confirmed that [Employee] operated his privately owned vehicle (POV) while on duty, without the required supervisory approval, and was involved in a traffic crash during that time. This directly violated General Order 201.26 and demonstrated a disregard for established policy regarding authorized vehicle use." The record supports the Trial Board Panel's finding and Employee conceded to driving his POV while he was still on duty, to go dock his BWC. Therefore, I find that this charge is supported by substantial evidence. Employee does not dispute that this cause of action is a Tier 3 offense. Pursuant to the Table of Penalty, the penalty range for a Tier 3 offense is 11 - 30 Day Suspension. Therefore, I find that Trial Board Panel's 11 Day suspension levied against Employee for **DRD #043-24**, Charge No. 1, Specification No. 1 is within the range allowed by law, regulation, and any applicable Table of Penalties.

Regarding **DRD #809-23**, Employee asserts that despite Charge No. 1, Specification No. 1, Charge No. 2, Specification No. 1, and Charge No. 3, Specification No. 1, being identical, the Panel recommended termination for Charge No. 1, Specification No. 1 and Charge No. 2, Specification No. 1, but recommended a 5-Day Suspension for Charge No. 3, Specification No. 1, without articulating the reason for the much more substantial penalty. Employee states that this disparity in penalty recommendation for the same conduct renders the Panel's decision internally inconsistent. Employee maintains that all these charges concern allegations of 'rude and unprofessional' language captured under Tier 1 and Tier 3 offense as listed in the Table of Penalties, which carry a penalty of suspension. Employee avers that even if these charges are sustained, the Table of Penalties requires that a corrective action of 30 Day suspension be imposed as a penalty. Employee appealed the Trial Board Panel's decision to the Chief of Police. The Chief of Police noted in their response to Employee's appeal that Employee had sustained misconduct in four separate investigations, amounting to guilty findings in 13 separate charges and that Employee had an extensive history of sustained, similar misconduct. The Chief of Police further stated that "It is possible for a single act, or string of actions, to violate multiple different General Orders. Here, [Employee's] behavior was unbecoming of an officer, in violation of General Order 120.21(VI)(A)(11); was detrimental to the Department's reputation, in violation of General Order 120.21(Attachment A)(Part A-24); and was a failure to obey orders, specifically General Order 201.26(V)(C), in violation of General Order 120.21(Attachment A)(Part A-16). Moreover, as you are well aware, violations of different General Orders receive different lengths of punishment. That multiple charges arose from a single string of actions does not mean that [Employee] can avoid the separate penalties linked to the multiple different General Orders he violated."

Moreover, pursuant to the Table of Penalties Guide "... the chief of police, or his or her designee may, without regard to the provisions of this section, in extraordinary circumstances when confronted by a unique factual situation: ... Determine that a penalty greater than that established in the Table of Penalties shall be imposed, provided that such authority finds that, under all the circumstances of the case, the aggravating considerations outweigh the mitigating considerations. Such considerations shall be set forth on the record with particularity, and such findings shall be made by a preponderance of the evidence."

Here, I find that the Chief of Police, in exercising their discretion, found Employee's conduct to be aggravating given the totality of the circumstances. As such, the Chief of Police upheld a greater penalty than established by the Table of Penalties. The Chief of Police explained in their *Douglas* factors analysis that Employee's argument that *Douglas* Factor 12 should be mitigating is unpersuasive. The Chief of Police cited that "When [Employee's] prior pattern of similar misconduct is considered, the recommendation to terminate is even more defensible. ... [Employee] was previously suspended for nearly the exact same misconduct just a year prior. The fact that he is in this same position again only shows that this misconduct cannot be explained away as "one turbulent week." It also shows that a lengthy suspension will not deter future conduct. Therefore, *Douglas* Factor 12 remains aggravating." Consequently, I conclude that Agency's chosen penalties of Termination for **DRD #809-23**, Charge No. 1, Specification No. 1, and Charge No. 2, Specification No. 1, and its chosen penalty of 5 Day suspension for Charge No. 3, Specification No. 1 is within the range allowed by law, regulation, and any applicable Table of Penalties.

Penalty Based on Consideration of Relevant Factors

Although OEA has a “marginally greater latitude of review” than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate.²⁹ The “primary discretion” in selecting a penalty “has been entrusted to agency management, not to the OEA.”³⁰ Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case.³¹ 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 OEA were in MPD’s shoes in the first instance; such an approach would fail to make proper deference to the Agency’s primary discretion in managing its workforce. Rather, OEA’s review of an agency-imposed penalty is essentially to ensure that MPD conscientiously considered the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if OEA finds that the agency failed to weigh the relevant factors, or that MPD’s judgment clearly exceeded the limits of reasonableness, is it appropriate for OEA then to specify how the MPD’s decision should be corrected to bring the penalty within the parameters of reasonableness.³²

A review of the record reveals that Agency’s decision to terminate Employee was proper. As previously noted, when an Agency’s charge is upheld, this Office has held that it will leave the 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 judgment.³³ The Chief of Police opined in their response to Employee’s Trial Board Panel Appeal that “[b]ased on the scope, repetition, intentionality, and egregiousness of [Employee’s] misconduct, I have concluded that termination is the only appropriate penalty. I further find the *Douglas* Factor analysis to be appropriate.” Consequently, I conclude that given the totality of the circumstances as enunciated in the instant decision, the penalty of termination 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 judgment. Therefore, I find that Agency’s action of removing Employee from service for **DRD #809-23**, Charge No. 1, Specification No. 1, and Charge No. 2, Specification No. 1, be upheld.

ORDER

Based on the foregoing, it is **ORDERED** that the Agency’s action of removing Employee from service is hereby **UPHELD**.

FOR THE OFFICE:

/s/ Monica M. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge

²⁹ See, *Douglas v. Veterans Administration*, 5 MSPB 313, 328, 5 M.S.P.R. 280, 301(1981) (Federal Merit Protection Board case); Raphael 740 A. 2d 945).

³⁰ *Id.*

³¹ *Id.*

³² *Raphel* 740 A. 2d at 945.

³³ See *Stokes*, *supra*; *Hutchinson*, *supra*.