

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
Jason Gulley,	)	OEA Matter No. 1601-0026-17
Employee	)	
	)	Date of Issuance: February 22, 2018
v.	)	
	)	Joseph E. Lim, Esq.
Metropolitan Police Department,	)	Senior Administrative Judge
<u>Agency</u>	)	
Jason Gulley, Employee <i>pro se</i>		
Brenda Wilmore, Esq., Agency Representative		

**INITIAL DECISION**

PROCEDURAL BACKGROUND

On January 30, 2017, Jason Gulley (“Employee”), a Police Lieutenant at the Metropolitan Police Department (“MPD” or “Agency”), filed a Petition for Appeal with the Office of Employee Appeals (“Office” or “OEA”) challenging Agency’s final decision to suspend him from employment for twenty (20) days for insubordination, neglect of duty, and conduct prejudicial to the reputation and good order of the police force.

The matter was assigned to the undersigned Administrative Judge on May 5, 2017. I held a Prehearing Conference on May 24, 2017, and an Evidentiary Hearing on November 8, 2017, after a postponement request by the parties. I closed the record at the conclusion of the hearing.

JURISDICTION

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

ISSUE

Whether Agency’s action of suspending Employee for twenty days was taken for “cause”, and if so, whether Agency's penalty was appropriate under the circumstances.

Contentions of the Parties

The Agency contends that Employee was guilty of insubordination, neglect of duty, and conduct prejudicial to the reputation and good order of the police force. Specifically, Employee was charged with: authorizing a strip search despite his not being the Watch Commander (WC) at the time; failing to respond to a serious accident involving an MPD vehicle which resulted in personal injury to two MPD employees; and failing to properly account for a loaner vehicle while serving as a Watch Commander. Employee denies the charges and denies violating any MPD General Orders.

UNCONTROVERTED FACTS<sup>1</sup>

1. Employee was first appointed to the Agency as a Patrol Officer on March 27, 2000, and later promoted to Lieutenant and assigned to the Sixth District.
2. On June 9, 2016, Sixth District (“6D”) Commander David Taylor emailed all 6D management officials with a directive that certain vehicles, including Cruiser 979, were on loan from another division to be used for the Summer Crime Initiative (SCI). Commander Taylor’s email stated in relevant part, “Please ensure that these vehicle keys are secured and available upon request. No one else is to use them. I will hold the WCs and management accountable for these vehicles.”
3. On June 17, 2016, the day Watch Commander, Captain Marvin Lyons, gave the keys to Cruiser 979 to SCI officers for the day tour of duty. Those keys were not properly returned pursuant to Captain Lyons’ instructions. Instead the keys were given to 6D power shift Officers Steven Ochocki and Michael Smith. Those officers were not assigned as SCI officers.
4. When Employee came on duty as Watch Commander, he was unaware that Officers Ochocki and Smith were operating Cruiser 979, and did not check to ensure that the keys to Cruiser 979 were secured.
5. Later in the evening, while Employee was still serving as Watch Commander, Officers Ochocki and Smith were involved in a serious collision with another vehicle. Officers Ochocki and Smith were transported to the hospital for treatment of relatively minor injuries, and Cruiser 979 was totaled. The civilian driver of the other vehicle was observed lying on the ground, while his/her vehicle was resting on top of a metal fence and leaking fluids. The investigation does not address whether the civilian was injured or transported to the hospital.
6. Employee did not respond to the scene of the accident.
7. On June 19, 2016, Employee provided a Police Department (“PD”) 119 Form to Captain Guillermo Rivera regarding the incident. Employee acknowledged that he failed to account for the keys to Cruiser 979, and provided an explanation for the error. However, he also stated, “It wasn’t until I arrived on scene, that I realized the officers were operating Cruiser 979.”
8. Captain Brian Harris investigated the matter and recommended that Employee be cited for Adverse Action.
9. On September 16, 2016, Employee was served with the Notice of Proposed Adverse Action, charging him with one specification of Failure to Obey Orders or Directives, one specification of Neglect of Duty, and one specification of Prejudicial Conduct. A 20-day

---

<sup>1</sup> Derived from the parties’ joint stipulations of facts and uncontested documents and exhibits of record.

suspension was proposed:

1. Failure to Obey Orders or Directives

Specification No. 1 - In that, on June 17, 2016,<sup>2</sup> while serving as the Sixth District Watch Commander, you failed to respond to a serious accident involving an MPD vehicle that resulted in two members being transported to the hospital and the vehicle being damaged beyond repair. This misconduct is further described in General Order 101.09, Part III, Section G-16, which reads, "Watch Commanders shall: Respond to all serious events occurring during the shift." General Order 120.21, Attachment A, Part A, Section 16, prohibits any "Failure to obey orders or directives issued by the Chief of Police."

2. Neglect of Duty

Specification No. 1 - In that, on June 17, 2016,<sup>3</sup> while serving as the Sixth District Watch Commander, you failed to properly account for the keys to the loaner vehicles assigned to the Sixth District for SCI traffic overtime as directed by the Sixth District Commander. As a result, unauthorized members utilized a loaner vehicle and were involved in an accident that rendered it damaged beyond repair. General Order 120.21, Attachment A, Part A, Section 14, prohibits "Neglect of duty to which assigned, or required by rules and regulations adopted by the Department."

3. Prejudicial Conduct

Specification No. 1 - In that, on June 19, 2016, you submitted a written statement in reference to the above-mentioned incident. In that statement, you wrote that you were unaware that members were utilizing the loaner SCI vehicle until you arrived on the scene of the accident and observed the vehicle. The statements of several members indicate the you, in fact, never responded to the scene, as such your statement was less than forthright. General Order 120.21, Attachment A, Part A, Section 25, prohibits "Any conduct not specifically set forth in this order, which is prejudicial 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."

10. The Notice also indicated that Employee's prior disciplinary record within the past three (3) years included Insubordination and two (2) incidents of Failure to Obey Orders, and Directives.

---

<sup>2</sup> The Notice of Proposed Action incorrectly specifies that this incident occurred on June 11, 2016.

<sup>3</sup> The Notice of Proposed Action incorrectly specifies that this incident occurred on June 11, 2016.

11. On September 22, 2016, Employee filed his response to the Notice of Adverse Action.
12. On December 6, 2016, Employee was served with the Final Notice of Adverse Action advising that he would be suspended for twenty days.
13. On December 14, 2016, Employee filed an appeal of the Final Notice of Adverse Action.
14. On January 5, 2017, the Chief of Police denied the appeal.

#### EVIDENCE<sup>4</sup>

1. Captain Brian Harris (“Harris”) testified as follows: (Transcript pgs. 7 - 67.)

Harris was the Police Captain for the MPD’s Sixth District. Harris testified that he served as a watch commander on several occasions. The watch commander was held accountable for the keys to all the vehicles under his or her watch. He explained that the watch commander was required to check the keys and the money into a secured safe room. Harris testified that the normal section keys were put in the roll call room. He stated that the keys for the traffic vehicles were hung above the safe on a hook. Harris explained that as watch commander, he would account for the keys, any money that was in the station, and check the safe to confirm that they were secure. At the end of the night, Harris would fill out a form and account for everything that he took out. The form also listed the watch commander that was relieved. Further, the watch commander was required to report any serious incidents or events that occurred on the watch commander’s report.

Harris testified that a watch commander was also required to check on the scene of a serious accident involving MPD vehicles. He stated that he considered a serious accident as an incident where officers were injured, although there was no definition of a serious incident in Agency’s General Orders. During occasions where officers were involved in vehicular accidents, the Sergeant would generate a corresponding report. Harris stated that as a watch commander, sometimes he delegated authority to other officials or individuals to respond to the scene of the second incident if there was more than one incident happening at the same time. After the scene was cleared, the watch commander should drive to the second scene to confirm that all was well.

Harris investigated Employee’s neglect of duty and false statement charges. He stated that Employee did not account for some police equipment, car keys, and a damaged vehicle. Further, when Employee provided a statement regarding the use of the vehicle, he provided a false statement to Captain Rivera.

Harris testified that there was a vehicle assigned to the Sixth District for summer crime initiative overtime. The vehicle was to be used for overtime units to conduct traffic enforcement. He explained that Employee was responsible for loaning the vehicle out to officers in the

---

<sup>4</sup> The court reporter erroneously marked the matter number as 1601-0025-17. The correct matter number for the transcript should be 1601-0026-17.

summer crime initiative overtime program for each tour of duty. Employee was also accountable for the vehicle's keys at the beginning and end of each tour. Harris stated that Employee failed to account for the key to police cruiser vehicle 979. He indicated that Employee did not list that the key was missing. Harris further explained that if Employee did not account for a particular key, he was required to go over the radio, or find a sergeant and have them question if anyone was using the vehicle, then have the individual return the vehicle. He stated that because of this incident, Employee was charged with neglect of duty.

During Harris' investigation, he learned that Employee did not account for police cruiser vehicle 979. That same vehicle with the keys that Employee failed to account for was involved in a serious accident where there were injuries involving two police officers. Harris stated that the accident was considered serious enough for a watch commander to respond to, because two officers sustained injuries and the vehicle was totaled.

Harris further testified that Employee failed to respond to the second location after he cleared the first scene. Instead, Employee turned over his watch to Lieutenant Jameson without going to the scene of the accident. Harris stated that he knew for a fact that Employee did not respond to the scene, because they were in the office together and there was still an investigation on the scene. Harris himself did not go to the scene because he was not the watch commander, and thus did not know the status of the scene at the time because he had just arrived at work.

Harris explained that he received statements from other individuals that stated that Employee was not on the scene of the accident; however, Employee stated that he was.

Harris testified that if police cruiser vehicle 979 was not involved in an accident, the next watch commander would have presumably have to account for the keys. If the keys were not there, then an investigation would have been conducted to determine the location of the vehicle. Harris asserted that Employee was charged with failure to obey an order because he failed to go to the scene of the accident. Harris also provided that Employee made a false statement. However, in lieu of charging Employee with making a false statement, Agency charged him with prejudicial conduct for making the original false statement, that Employee recanted.

## 2. Lieutenant Valerie Steward ("Steward") Tr. 67-88.

On June 17, 2016, Steward was assigned to the Court Liaison Division, detailed to the Sixth District. On the date in question, Steward arrived to the scene of an accident. When Steward arrived on the scene, she observed a totaled police cruiser, two officers that sustained injuries, another vehicle that was pushed up against a house, and a gentleman who fell out of a vehicle.

Steward explained that when she responded to the scene, she contacted Employee who was the watch commander for that evening and informed him that there was a serious accident involving two officers and a civilian. Steward said she contacted Employee twice to notify him about the incident. However, Employee never responded to the scene. She explained that as watch commander, Employee should have responded because Agency's General Orders require the watch commander to respond to all serious incidents in which they have authority.

Steward affirmed that the first time she contacted Employee regarding the accident, he told her that he was not going to the scene. Steward explained that she did not question why he was not coming because he was in charge as the watch commander. The second call made to Employee was to update him on the matter since it was a serious accident. She explained that watch commanders were required to document incidents on their supervisory report at the end of their shift. Steward stated that she did not have to prepare a report.

Steward testified that she was not surprised that Employee did not arrive on the scene. While she generally worked in an office setting and not in the field, she stated that if a watch commander stated that they were not coming, it would have to be accepted.

On cross-examination, Steward testified that it was uncommon for a watch commander to work alone or be the only lieutenant working as the highest ranking official. She agreed that a watch commander was able to delegate authority to have other officials go handle a scene while the watch commander was handling another scene. Steward stated that she was not delegated the authority to handle the scene of the accident.

Steward confirmed that she never saw Employee at the scene of the accident and stated that the scene was resolved when she left. Steward also testified that she did not know where Employee was when she contacted him.

3. Inspector Michael Gottert (“Gottert”) Tr. 88-107.

As the Director of the Disciplinary Review Division at Agency, Gottert explained that he was responsible for reviewing cases where there was an administrative investigation and recommendation for adverse action. Gottert stated that Agency proposed a twenty-day suspension for Employee. He explained that the neglect of duty charge was a second violation, which proposed a fifteen-day suspension. He also stated that the prejudicial conduct charge was a result of Employee’s failure to be fully forthright.

On cross-examination, Gottert stated that there would be nothing wrong if a watch commander was tied up on the scene of a serious incident and they requested another official to handle the other incident. However, he indicated that a General Order stated that if there was a serious incident, the watch commander was to respond. If the watch commander was on the scene of another serious incident, he or she would have to designate an individual to determine what was going on because the watch commander was responsible for delegating that authority.

4. Sergeant Jason Gulley (“Employee”) testified as follows: (Transcript pgs. 109 – 147)

Employee testified that he did not respond to the scene of the accident that involved two officers and a civilian driver. He explained that the statement he provided which indicated that he was on the scene of the accident was taken out of context. However, Employee admitted that he signed a statement that said he was at the scene of the accident.

Employee attested that he was not responsible for and should not have been held accountable for not responding to a serious accident, the keys, and the original false statement charge. He did not take responsibility for anything that occurred on the date of the accident.

Employee testified that prior to the accident, there were two robberies. One robbery occurred two hours before the car accident, the other forty-five minutes prior to. He stated that he did respond to the officer in trouble, but could not recall what time he arrived on the scene. He explained that he was coming from the robbery, making his way back to the station when he received the call for assistance. Employee stated that Lieutenant Steward had already responded to the scene. He did not recall what time the robbery occurred, but estimated that it was around 8:00 p.m., because it was right before the accident. Employee stated that it took him ten minutes to respond to the scene, but by that time, Steward had already left. He did not know that she responded to the scene until he heard her testimony.

Employee stated that Steward contacted him at 8:36 p.m., so he believed that he arrived on the scene around 8:15 or 8:20 p.m. When Steward contacted Employee she informed him that there was an accident involving two officers and a citizen. Employee asked Steward if she had the scene handled and she informed him that Lieutenant Joyner along with several other sergeants were on that scene. Employee instructed Steward to keep him updated. Twenty minutes later, Steward called Employee stating that the officers did not want to go to the hospital. Steward made them go because of the severity of the damage to the vehicle. Employee told Steward to update him if anything changed.

Employee testified that Steward's testimony did not make sense to him. He stated that she was on the scene for two minutes. Based upon the timeline of events, he did not know how she was able to clear a scene so quickly because Steward was on foot and the accident was on the other side of the district. Employee did not think that Steward lied, but stated that she may have confused the timeframes. Employee stated that at 10:00 p.m. he completed the arrests of the suspects on the scene. Employee did not provide a copy of the police report to corroborate his testimony.

Employee testified that he received an email from the Commander, which was completely separate from the duties and responsibilities for the watch commander. Employee explained that the email stated that the keys should be secured. However, Captain Lyons gave the keys out and did not inform Employee that the keys were given out. Employee stated that the keys were supposed to be locked in the safe room and he did not check to make sure that they were secured because he did not believe that the Captain would violate the Commander's email by distributing the keys. He further explained that he did not physically check the keys because there was no reason for him to assume that Captain Lyons would have given the keys out; therefore, Employee did not check the safe.

Employee stated that had the Captain not given out the keys, he would not have been disciplined. Employee admitted that if he had checked the inventory of all logs to make sure the keys were accounted for at the beginning of his shift, he would have learned that the key was missing.

Employee testified that the incident occurred on June 17, 2016, and that on June 19, 2016, he wrote down a statement regarding the keys to the vehicle. Employee explained that his false statement was taken out of context because his main focus was on the keys. Further, Employee stated that the neglect of duty charge was egregious and that he was inappropriately

charged. Employee maintained that he performed all of his duties responsibly. Employee stated that he would not have contested a corrective action. He stated that he did not give the keys out that caused the vehicle to be damaged.

Employee stated that he did not think that Steward expected him to report to the scene because he believed that she had the scene handled. If she did not have the situation under control, Employee did not know why she did not ask him for assistance. If Steward required assistance and asked for help, Employee stated that he would have told her that he would make it to the scene as soon as possible. Employee maintained that there were two serious incidents happening. He prioritized one incident as there was no official at the scene.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

#### Whether Agency had cause for adverse action

OEA's Rules provide that an agency's action must be supported by a preponderance of the evidence, which is defined as "that degree of relevant evidence which a reasonable mind, considering the matter as a whole, would accept as sufficient to find a contested fact more probably true than untrue."<sup>5</sup>

Here, Agency levied several charges against Employee: Failure to obey orders or directives, Neglect of duty, and Conduct prejudicial to the reputation and good order of the police force. Both Agency and Employee presented evidence at the evidentiary hearing regarding these charges.

I find all the witnesses who testified to be credible. All the eyewitness testimony in this matter, including that of Employee, essentially corroborated each other's version. Employee admitted to Agency's charges. I therefore make the following findings of fact with regards to the following charges:

#### 1. Failure to Obey Orders or Directives

Agency General Order 120.21 prohibits any "Failure to obey orders or directives issued by the Chief of Police."<sup>6</sup> In addition, Agency General Order 101.09, Part III, Section G-16, reads, "Watch Commanders shall: Respond to all serious events occurring during the shift."<sup>7</sup>

The specification for this charge is that, on June 17, 2016,<sup>8</sup> while serving as the Sixth District Watch Commander, Employee failed to respond to a serious accident involving an MPD vehicle that resulted in two members being transported to the hospital and the vehicle being

---

4 OEA Rule 628.1, 59 D.C. Reg. 2129 (2012).

6 Agency Exhibit I.

7 Agency Exhibit G.

8 The Notice of Proposed Action incorrectly specifies that this incident occurred on June 11, 2016.

damaged beyond repair. Not only did the witnesses testify to these facts, but Employee himself admitted to failing to respond to the scene of a serious accident where two police officers and a civilian were injured. Employee contradicted himself by first alleging that he did arrive at the accident scene, but later changed his testimony to admit that while he was at one incident, he never bothered to respond to the second incident where a serious accident occurred nor did he delegate another officer to respond to the second incident.

I therefore find that Employee failed to obey the Police Chief's orders regarding responding to all serious events occurring during his shift.

I note that both sides agree that the Advance Notice of Adverse Action contained the wrong date of June 11, 2016, instead of the correct date of June 17, 2016, as the date of the occurrence. Both sides corrected the date in their joint stipulations of fact, and Employee did not raise any objections to the modest variance of five days, nor did he claim any prejudice to his defense against the Agency's charges.

In *Thelmiah Lee v. District of Columbia*, the D.C. Court of Appeals held that "Variance between amended information and proof with respect to date of accident from which defendant allegedly fled without leaving the required information did not prejudice defendant and, thus, did not warrant reversal of conviction; at no time did defendant voice any concern about the dates in the amended information, the date in the amended information was an error that was corrected orally more than once, both the information and amended information used the phrase "on or about," the **incorrect date** stated in the amended information was reasonably close to the correct **date** stated in the information, both the information and the amended information informed defendant of the precise **charges** against him, defendant had an opportunity to defend himself against the **charges**, and all of the evidence presented by the government proved that defendant's criminal conduct took place on **date** stated in information."<sup>9</sup> (Emphasis added.)

## 2. Neglect of Duty

Agency General Order 120.21 prohibits "Neglect of duty to which assigned, or required by rules and regulations adopted by the Department."<sup>10</sup> Agency's specification for this charge is that, on June 17, 2016,<sup>11</sup> while serving as the Sixth District Watch Commander, Employee failed to properly account for the keys to the loaner vehicles assigned to the Sixth District for SCI traffic overtime as directed by the Sixth District Commander. As a result, unauthorized members utilized a loaner vehicle and were involved in an accident that rendered it damaged beyond repair.

---

<sup>9</sup> *Thelmiah Lee v. District of Columbia*, 22 A3d 734 (2011).

<sup>10</sup> Agency Exhibit I, *supra*.

<sup>11</sup> The Notice of Proposed Action incorrectly specifies that this incident occurred on June 11, 2016.

Employee admitted that he failed in his duty to check the vehicle keys in the police station safe as he simply assumed that they were all present and accounted for. I therefore find that Employee neglected his duty in this regard.

### 3. Prejudicial Conduct

Agency General Order 120.21 states, “Any conduct not specifically set forth in this order, which is prejudicial 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.”<sup>12</sup>

For this charge, Agency’s specification is that, on June 19, 2016, Employee was less than forthright when he submitted a written statement indicating he was unaware that police members were utilizing the loaner SCI vehicle until he arrived on the scene of the accident and observed the vehicle. The statements of several members indicate that Employee, in fact, never responded to the scene.

Employee admitted that his written statement of arriving at the accident scene was untrue, and tried to explain his false statement by saying his main focus was on the unaccounted for vehicle keys. He had no credible explanation to explain why he signed this false statement even after reading over his statement and the customary warning that all his statements had to be truthful. I therefore find that Employee did make a false statement on his June 19, 2016, written statement to his superiors.

Based on the above, I find that Agency met its burden of proof on its charges against Employee by a preponderance of the evidence. Accordingly, I conclude that Agency had cause for adverse action against Employee.

#### Whether Agency's penalty was appropriate under the circumstances.

As this Office has stated in the matter of *Huntley v. Metropolitan Police Department*,<sup>13</sup> the primary responsibility for managing and disciplining Agency’s work force is a matter entrusted to Agency, not this Office. Our scope of review as to the appropriateness of a penalty is limited to a determination of whether the penalty is within the range allowed by law, regulation and any applicable table of penalties; whether the penalty is based on a consideration of the relevant factors, and whether there has been a clear error of judgment by the agency.

When assessing the appropriateness of a penalty, this Office will leave Agency's penalty undisturbed when it is satisfied, on the basis of the charges sustained, that the penalty is appropriate to the severity of the employee’s actions and is clearly not an error of judgment.

---

<sup>12</sup> Agency Exhibit I, *supra*.

<sup>13</sup> *Juliette Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review*, (March 18, 1994).

Based on the Table of Offenses and Penalties<sup>14</sup> as stated in Agency's General Order 120.21, the penalty for either a third offense of Failure to Obey Orders and Directives ranged from suspension to removal. The penalties for a first offense of Neglect of Duty as well as that for Prejudicial Conduct ranged from reprimand to removal. Here, the penalty of twenty (20) days suspension is clearly not an error of judgment. Accordingly, I conclude that Agency's action should be upheld.

ORDER

It is hereby ORDERED that Agency's action of suspending Employee from service for twenty days is UPHeld.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.  
Senior Administrative Judge

---

14 Agency Exhibit I, Attachment A.