

<sup>3</sup> Employee captioned this filing as ‘Employee’s Post Hearing Brief.’

Order granting Agency's Motion on July 3, 2024. The Prehearing Conference was rescheduled to August 29, 2024, with Prehearing Statements due by August 16, 2024.

On August 16, 2024, Agency filed a second Motion to Extend Prehearing Statement Deadline and to Continue the Prehearing Conference citing that the parties were still engaged in discovery. On August 23, 2024, the undersigned issued an Order granting Agency's Motion, and the Prehearing Conference was rescheduled to October 15, 2024, with Prehearing statements due by September 17, 2024. Agency submitted its Prehearing Statement on September 17, 2024. Both parties were present for the October 15, 2024, Prehearing Conference. Subsequently, on October 22, 2024, the undersigned issued an Order scheduling a second Prehearing Conference for November 4, 2024, with updated Prehearing Statements due by October 31, 2024. Both parties were present for the November 4, 2024, Prehearing Conference. Thereafter, the undersigned issued an Order on November 4, 2024, scheduling an Evidentiary Hearing for January 22, 2025, and January 23, 2025.<sup>4</sup> On February 12, 2025, the undersigned issued an Order rescheduling the Evidentiary Hearing for March 26, 2025, and March 27, 2025. Both parties were present for the scheduled Evidentiary Hearing.

On April 29, 2025, the undersigned issued an Order requiring the parties to submit written closing arguments by May 30, 2025. Subsequently, on May 30, 2025, Agency filed a Motion for Extension of Time due to other obligations. Employee filed an Objection to Agency's Motion for Extension of Time.<sup>5</sup> Employee filed her closing argument on May 30, 2025. On June 10, 2025, the undersigned issued an Order granting Agency's Motion, with closing arguments due by June 30, 2025. On June 30, 2025, Agency submitted a second Motion for Extension of Time due to other obligations in other matters pending before OEA. On July 1, 2025, Employee filed a Second Objection to Agency's Motion for Extension of Time to File Closing Argument. On July 1, 2025, the undersigned issued an Order granting Agency's Motion, with closing arguments due by July 14, 2025. Agency submitted its closing argument on July 14, 2025. Both parties have submitted their closing arguments as required. 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 Agency, in its administration of this action followed all applicable District of Columbia laws, rules and regulations.
- 2) Whether Employee's actions constituted cause for adverse action.

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<sup>4</sup> Due to personal extenuating circumstances requiring the undersigned's absence, on December 11, 2024, AJ Harris issued a Notice Regarding Temporary Abeyance of Proceedings to the parties postponing the scheduled Evidentiary Hearing until further notice.

<sup>5</sup> Employee's Motion was filed with OEA on April 29, 2025, one (1) day before OEA received Agency's April 30, 2025, Motion for Extension of Time.

- 3) Whether the penalty of removal was appropriate in the circumstances and within the range allowed by applicable law, rules, or regulations.

### SUMMARY OF MATERIAL TESTIMONY

The following represents a summary of the relevant testimony given during the Evidentiary Hearing on March 26, 2025, and March 27, 2025, as provided in the transcript (hereinafter denoted as “Tr.”) which was generated following the conclusion of the proceeding.

#### **Volume I (Vol. I): March 26, 2025**

##### **Agency’s Case in Chief**

Johnice Walton (“Walton”) Tr. Vol I. pgs. 31-80.

Walton stated that she worked as a Legal Instrument Examiner (“LIE”) with the Department of Motor Vehicles (“Agency”). She was responsible for registering vehicles and issuing driver’s licenses. Walton testified that she worked with Kimmlyn Marshall (“Marshall”) and Employee. Walton asserted that prior to working at Agency’s location on M Street, she previously worked with Employee at another Agency location in the processing center. Tr. Vol I. pgs. 31-34.

Walton recalled an incident that occurred in the women’s restroom on February 23, 2024. She testified that she was already in the restroom stall when Employee entered the restroom. She stated that she overheard Employee speaking with someone on her cellular phone regarding a cable bill. Shortly after, Marshall entered the restroom. Walton averred that once she came out of the stall, she asked Marshall what she planned on eating for lunch. Tr. Vol I. pg. 36. According to Walton, Employee was still on the phone and Employee told the individual she was speaking with to hold on and subsequently stated that “two old bitches being loud and I can’t hear...” Tr. Vol I. pg. 37. Walton stated that she was shocked by Employee’s remark and in response she stated that they were in a public restroom. According to Walton, Employee called her and Marshall “two bitches” and also stated, “*I’ll beat y’all asses. You two bitches, I’ll beat y’all asses. And Kim, you can call Brittany up here. I’ll whoop that bitch ass too. I’m sick of y’all old ass bitches. AARP motherfuckers.*” Tr. Vol I. pg. 38. Walton stated that Marshall told Employee that Employee was not going to harm her daughter. Walton explained that Brittany is Marshall’s daughter who also worked at Agency. Tr. Vol I. pg.38.

Walton testified that she physically stepped in between Employee and Marshall because she was afraid of the way they were interacting. Walton asserted that Employee hit her back and shoulder in an attempt to physically harm Marshall and that Employee used profanity at them. Tr. Vol I. pgs. 39-40. Walton testified that she was scared, shocked, and upset at the altercation that took place, and she was unsure what else Employee was capable of. Tr. Vol I. pg. 45. Walton noted that after she was attacked by Employee, she calmed herself and left the restroom with Marshall. Walton stated that Employee came out behind them and in a lower voice, she said, “*I’m going to get you two bitches.*” Tr. Vol I. pg. 45. Walton averred that Employee also

said in a higher voice that, “*I don’t know who you all think you are dealing with.*” Tr. Vol I. pg. 46. Walton testified that their supervisor, Jasmin Hickson (“Hickson”), took Walton and Marshall to a supply closet and inquired about what happened and she was sent to the Administrator’s office. Tr. Vol I. pg. 47. Walton asserted that she met with Agency managers, Rakonda Cobbs (“Cobbs”) and Fabien Toussaint (“Toussaint”), and a shop steward/union representative, Sean Douglas (“Douglas”). She stated that she submitted a written statement of the altercation to Toussaint. Tr. Vol I. pgs. 48-51.

Walton testified that she has known Marshall in a professional capacity for twenty (20) years. She cited that she had not known Employee for an extensive period of time; however, prior to the incident, she had no issues with Employee. Tr. Vol I. pgs. 58-59. Walton described the layout of the restroom where the February 23, 2024, incident took place. She noted that there were three stalls and two sinks in the restroom. She said she was in one of the stalls before Employee and Marshall entered. Walton averred that when she exited the restroom stall, Employee was still inside. When Employee exited the stall, she was standing towards the back of the restroom. Tr. Vol I. pgs. 60-61.

Walton testified that in the statement she provided to Toussaint, she noted that Employee had used profanity towards her and Marshall and had stated that her husband would threaten Marshall. She also testified that her statement indicated that she received a call from Marshall that Employee and her husband threatened Marshall. Walton testified that to prevent further conflict, she asked her manager, Mr. Jackson, if they could ensure Marshall’s safety. Tr. Vol I. pgs. 70-71. Walton stated that she was not disciplined as a result of the incident. She stated that she is five feet, two inches (5’2) tall. Walton maintained that Employee pushed on her back. Tr. Vol I. pgs. 79-80.

Kimmylyn Marshall (“Marshall”) Tr. Vol I. pgs. 82-156.

Marshall has been a Legal Instrument Examiner (“LIE”) with Agency for 24 years. She worked with Employee approximately one or two years prior to the February 23, 2024, incident. Marshall testified that on February 23, 2024, she walked into the restroom and turned on the water. She stated that she saw that Employee was in the corner on her mobile phone and Walton was inside the restroom stall. Marshall asserted that after she turned on the water to the restroom sink, she went into the restroom stall and started a conversation with Walton discussing their lunch plans. Tr. Vol I. pgs. 82-84. Marshall testified that once she left the stall, she heard Employee say to the individual on the other end of her call to “*speak louder because these old bitches in here is talking too loud. I can’t hear you.*” Tr. Vol I. pg. 84. Marshall cited that she continued washing her hands and responded to Employee that they were in the restroom, which was public space. Tr. Vol I. pgs. 84-85.

Marshall further explained that thereafter, the three (3) women engaged in a verbal altercation, yelling and using profanity toward one another. Marshall stated that Employee called her an ‘American Association of Retired Persons (“AARP”) bitch.’ She testified that Employee threatened to harm her daughter, and in response, she began using profanity toward Employee. Marshall admitted that Walton tried to diffuse the situation between them because Employee attempted to harm her by swinging her arms approximately three (3) or four (4) times. Marshall

asserted that when Employee moved towards her, she felt nervous and scared because she felt threatened in the workplace. Tr. Vol I. pgs. 85-89. Marshall stated that the escalation of the altercation prompted her to leave the restroom into the hallway, where a lot of people had come out of their offices due to the yelling and screaming. Marshall testified that she was not saying anything at that point. She further testified that their manager, Jasmine, Hickson, approached her, Walton, and Employee and separated them. Marshall averred that her manager had her go into a supply closet, and while there, she provided a sequence of events to her manager. Tr. Vol I. pg. 93-96. Marshall testified that she was asked to provide a written statement about the incident to Cobb, Toussaint, and Douglas. She asserted that after the meeting with Cobb, Toussaint, and Douglas, she was advised to go home. Tr. Vol I. pg. 99.

Marshall testified that once she left the office, another incident involving Employee occurred. She stated that the incident occurred on Delaware and M Street, in Southwest, Washington, D.C. Marshall explained that as she was walking towards the metro train station with another coworker, Keara Davis (“Davis”), Employee, her husband and another individual pulled over in a vehicle next to where Marshall was walking. Tr. Vol I. pg. 103. Employee’s husband was the driver. Marshall stated that Employee said from the passenger seat “*say now, what’s all that shit you was in there talking?*” Tr. Vol I. pgs. 103-104. Marshall asserted that Employee’s husband exited the vehicle and approached her. Marshall stated that she pulled out her pocketknife and when he saw the knife, he told Employee that Marshall had a knife, they re-entered their vehicle and left. Tr. Vol I. pgs. 104-105.

Marshall stated that once Employee and her husband left, a police officer walked up to Davis and her to confirm that they were safe. She cited that when they affirmed that they were, the officer advised them to resolve their issues. Marshall testified that the police officer stated that he had seen too many senseless homicides. Marshall stated that the officer then drove down the street and pulled Employee’s vehicle over. Marshall inferred that the officer may have conveyed the same information to them because Employee’s vehicle departed shortly after. However, Employee returned and Marshall observed the vehicle driving up and down the street approximately ten (10) to fifteen (15) times. Marshall said that Davis suggested that Marshall return to their office because she was concerned about her wellbeing. Marshall testified that as they returned to the office, they saw Walton, Letitia West (“West”), and Hickson. Hickson suggested that Marshall go to the police station and file a report. Tr. Vol I. pgs. 105-106. Marshall provided that nothing materialized from filing the police report. Tr. Vol I. pg. 118. She testified that she was suspended without pay as the result of the incident. Tr. Vol I. pg. 119.

Marshall testified that the verbal argument occurred while she was washing her hands. Tr. Vol I. pgs. 123-124. She cited that she did not remember witnessing Employee assault Walton. Tr. Vol I. pgs. 126. Marshall claimed that she did not leave the restroom because she was waiting for Walton to leave since they were discussing their lunch plans. Tr. Vol I. pg. 124. Marshall testified that management asked her to write a statement, which she submitted on February 25, 2024. Tr. Vol I. pg. 127.

Marshall stated that she was afraid that she would lose her job because she was involved in two (2) altercations with Employee on the same day. Marshall testified that prior to the incident, she had no previous disciplinary actions. She stated that she filed the police report

because she feared for her life when Employee's husband and their friend exited the vehicle and approached her in an aggressive manner. Vol I. pg. Tr. 133.

Marshall testified that she feared that Employee might physically harm her while they were in the restroom. She stated that when they were outside of the building, her pocketknife was in her right hand, and it was pointed down at the ground. Marshall asserted that she never brought the knife up to threaten Employee or Employee's husband. Tr. Vol I. pg. 155-156.

Letitia West ("West") Tr. Vol I. pgs. 159-168.

West has been a Legal Instrument Examiner ("LIE") at Agency since 2000. West recalled the incident that occurred on February 23, 2024. She explained that she heard a commotion coming from the restroom. West testified that she went to the restroom and saw that Employee, Marshall, and Walton were arguing and so she attempted to break up their argument. She stated that when she got into the bathroom, *"I witnessed an argument going on between three people."* West also stated that she went into the restroom to *"... just tried to pull them up – break them up from arguing and get them to exit the bathroom."* She recalled Employee saying that she would beat the bricks off of Walton. Tr. Vol I. pgs. 159-161, 164-165. When asked who was closest to the door when she got into the restroom, West testified that *".... from my recollection, I believe it was Johnice Walton."* She also stated that *"[Walton]... had her back to me. I believe that ... it's so long ago, but I think [Marshall] was by the sink and [Employee] was towards the stall."* Tr. Vol. I. pg. 165.

West stated that she met Walton when she started working at Agency and that they are friends. Tr. Vol. I. pg. 164. West confirmed that while in the hallway, she observed Employee and Walton going back and forth. Tr. Vol. I. pgs. 165-166. While West was unsure of what transpired during the second incident that occurred outside of Agency's office between Employee and Marshall, West stated that she and Hickson witnessed Employee and her husband drive up and down the street a couple of times. Tr. Vol I. pg. 167.

Jasmin Hickson ("Hickson") Tr. Vol I. pgs. 170-200.

Hickson is a Process Center Manager at Agency. She recalled the day of the incident and stated that at approximately 9:30 a.m., she was at her desk and heard profanity used in the hallway. When she went to the hallway outside of the restroom, Hickson took Marshall and Walton and spoke with them in the supply closet adjacent to the restroom to inquire about what transpired. They explained that Employee made a comment to the individual on the phone she was speaking with that she could not hear over 'these old bitches'. Hickson further testified that she was told Walton inserted herself between Employee and Marshall to avoid Employee from harming Marshall. Tr. Vol I. pgs. 170-178.

Hickson stated that she was instructed to write a statement about the incident, which was submitted to Toussaint. She provided that after her conversation with Marshall and Walton, she did not investigate the restroom incident. Hickson said that she was not in charge of the investigation, and that it was the responsibility of upper management. Tr. Vol I. pgs. 179-181.

Hickson recalled another incident that occurred between Marshall and Employee outside of Agency's office around lunchtime. Hickson asserted that she was told by Walton that Walton received a call from Marshall who stated that Employee and some individuals she was with, exited their vehicle and approached Marshall in an aggressive manner. This prompted Hickson to leave the office to see what occurred. Hickson cited that she observed three (3) of her employees, Walton, Marshall, and Davis outside. Tr. Vol I. pgs. 182. Hickson stated that while she was outside, she could not see who was physically driving, but she observed Employee's vehicle circling on M Street. Hickson said she knew it was Employee's vehicle because she saw Employee's white Mercedes Benz on a daily basis. Hickson testified that she told everyone except Marshall to return to the office. Tr. Vol I. pgs. 183. She asserted that she and Marshall went to the police station near Agency to file a report because she was concerned for Marshall's safety. Hickson stated that once Marshall provided her statement to the police, she left the police station, and Marshall's children arrived to ensure she went home safely. Tr. Vol I. pgs. 184-185.

Hickson identified Agency's Exhibit E as Agency's handbook which was distributed to all Agency employees. Hickson stated that in the handbook, there is a statement of zero tolerance for workplace violence, which Employee violated. Tr. Vol I. pg. 187. Hickson also reviewed Agency's Exhibit G, which provided a summary of policies and procedures of the processing center, including zero tolerance for unprofessional behavior. Tr. Vol I. pg. 188.

Hickson testified that she observed all three (3) employees arguing in the hallway, and she heard Employee use profanity. Hickson cited that her written statement only referenced Marshall and Walton because she interviewed them, and not Employee. Tr. Vol I. pg. 195.

Rakonda Cobb ("Cobb") Tr. Vol I. pgs. 201-273.

Cobb is a Vehicle Services Administrator with Agency. She testified that she was Toussaint's direct report. Cobb explained that on February 23, 2024, Toussaint contacted her and requested that she come to the second floor. Cobb stated that initially, she was unable to locate Toussaint; however, she passed several people in the hallway, who informed her that an incident occurred. She cited that when she located Toussaint, he informed her that an incident occurred in the restroom between Employee, Marshall, and Walton. Cobb averred that she directed Toussaint to obtain statements from the employees, and she contacted Douglas. Tr. Vol I. pgs. 201-206.

Cobb testified that she sent Employee and Marshall home on administrative leave immediately after the altercation occurred. Cobb testified that Employee was asked to submit a written statement about the incident, which Cobb received via email. She asserted that she did not send Walton home because it appeared that Walton was trying to be the mediator between the two employees, but Walton was required to submit a statement. Tr. Vol I. pgs. 215-218.

Cobb testified that she reported her findings to Darnell Fountain ("Fountain") who was the Deputy of Operations with Agency. She stated that she informed Fountain about the incident and explained that Employee and Marshall were on administrative leave. Cobb explained that she needed to contact Agency's Human Resources ("HR") to inquire about the duration of administrative leave for both employees. Cobb also testified that she searched for video

surveillance outside of the restroom, but unfortunately, she was unable to locate any video footage. She explained that the camera in the hallway was defective. Tr. Vol I. pgs. 219-220.

According to Cobb, she received a call from Toussaint providing that Marshall was outside and was being harassed by Employee. She learned that Marshall filed a police report and Marshall submitted a stay away order to Cobb. Tr. Vol I. pg. 221. Cobb also noted that the argument in the hallway was heard on the entire second floor, including HR. However, HR did not interject in order to remain an unbiased party. Tr. Vol I. pgs. 223.

As a proposing official, Cobb stated that she received the disciplinary packet from Toussaint. She completed the *Douglas* factors by reviewing the handbook to determine which Agency's policies provided support for discipline. Cobb asserted that she recommended termination for Employee. Tr. Vol I. pgs. 224-225. She stated that she did not recommend termination for Marshall because the evidence did not support that Marshall initiated the incident. Tr. Vol I. pg. 235. Cobb testified that she called Employee to meet with her in the conference room to issue the proposed packet of removal to Employee. Tr. Vol I. pg. 240.

Cobb stated that there was no Service Integrity Department at Agency. She explained that the role of an integrity officer was to conduct internal and external investigations for Agency. Additionally, an integrity officer did not perform an internal investigation into this matter because most of the officers had resigned. Tr. Vol I. pg. 245.

Cobb testified that prior to February 23, 2024, Employee informed her that she had an issue with Marshall. Cobb recalled a time when Employee came to her office with her shop steward providing that she was trying to remain professional. However, Marshall antagonized her and wanted to put their issue on notice. Cobb cited that she notified the manager and supervisor and provided them with guidance on how to address the two employees. Tr. Vol I. pgs. 248- 249.

Cobb testified that the current incident was the first time she investigated an employee who physically assaulted another employee at work. Cobb stated that prior to the incident in this matter, she had not received information that Walton engaged in any physical altercation with another Agency employee. She asserted that had she received information about Marshall physically assaulting another employee, Marshall would have also been terminated instead of suspended. Tr. Vol I. pgs. 268-269. Cobb said she considered the verbal statements provided in the conference room on February 23, 2024, and the demeanor of the employees when they provided their statements. Tr. Vol I. pg. 271.

### **Employee's Case-in-Chief**

Natorie Ashton ("Ashton") Tr. Vol I. pgs. 276-279.

Ashton is a Legal Instrument Examiner with Agency. She testified that on the day of the incident in question, she was sitting at her seat when she heard a lot of commotion from the hallway. She testified that as she neared the hallway, she observed Employee, Marshall, and



Walton engaged in an argument. Ashton attempted to separate the women by placing herself in between them and she ushered Employee outside of the building. Tr. Vol I. pgs. 276-279.

Employee Tr. Vol I. pgs. 280-364.

Employee was a Legal Instrument Examiner with Agency for five (5) years prior to her termination. Employee explained that on February 23, 2024, she entered the women's restroom and knew that someone was in there because one of the stalls was closed. Employee stated that she proceeded to the farthest sink and was talking on the phone to her son's school nurse. Employee asserted that Marshall entered the restroom and went into one of the stalls. She explained that Walton, who was already in the restroom, exited the stall to wash her hands, and Marshall exited too. Employee demonstrated the position the women were in and provided that she was closest to the wall, Walton was in the middle, and Marshall was closest to the door. Tr. Vol I. pgs. 280-282.

According to Employee, Walton began to talk loudly, which prompted Employee to place her call on speakerphone because she could no longer hear the nurse speaking. Employee said she heard Marshall and Walton state that they were in a public restroom and that they could speak as loud as they wanted. Employee cited that Marshall proceeded to walk towards her, but Walton stepped in between them to prevent the altercation. Tr. Vol I. pg. 283. Employee stated that Marshall attempted to approach her while she was still on the phone. She explained that once she ended the call, she and Marshall had a verbal argument and called each another derogatory names. Employee asserted that she did not raise her hand or swing her arms. Tr. Vol I. pg. 284. Employee testified that at one point, Marshall referenced contacting her daughter to harm Employee and in response, she told Marshall that she could contact whomever she wanted to bring into the restroom because Employee is a "*young ass bitch*." Tr. Vol I. pg. 285. Employee asserted that as the argument continued to ensue, Walton continued to restrain Marshall from physically engaging with Employee. She cited that West opened the door, and the women exited the restroom and continued their argument in the hallway. Tr. Vol I. pg. 286. Employee stated that she noticed there were a lot of employees in the hallway. She explained that she contacted Ashton who ushered her outside of the building. Employee also recalled Toussaint directing Ashton to take her outside. Tr. Vol I. pg. 287.

Employee testified that when she returned inside the building, she spoke with Toussaint, Douglas, and Cobb in the conference room on the third floor. Employee stated that she explained what transpired in the restroom between the women in the meeting. Tr. Vol I. pgs. 289-290. She stated that she provided a written statement about the incident and asserted that she did not physically assault Walton. Employee testified that she was placed on administrative leave for three days and was told to leave the office for the remainder of the day. Tr. Vol I. pgs. 291, 302.

Employee testified that her husband picked her up from Agency approximately forty-five minutes later. She stated that as they left Agency in their vehicle, Employee and her husband saw Marshall and Davis walking down the street. As they approached a traffic light, Employee's husband pulled the vehicle over and exited the vehicle because it appeared to her that Marshall was making hand gestures towards him. Employee said she asked Marshall to stop making gestures toward her husband because he was not involved in their altercation. Employee asserted

that they saw Marshall pull out her knife and they re-entered their vehicle and left. Employee testified that as they drove off, they saw an officer approach Marshall and shortly after, the same officer pulled them over in their car. Employee cited that the officer asked them if they were okay and whether anyone felt threatened. Employee said she told the officer that they were good and explained that a workplace incident extended beyond the premises. Employee stated that the officer warned that they should not be arguing and stated that people are killed every day for senseless acts, which everyone in the vehicle agreed and the officer left. Tr. Vol I. pgs. 298-300.

Employee stated that she was aware that Marshall filed a restraining order and a civil suit against her. However, she did not receive the notice until mid-March. Employee noted that she appeared in court and after the judge waited for twenty minutes, the case was dismissed because Marshall failed to appear. Tr. Vol I. pg. 301.

Employee testified that Hickson did not obtain a statement from her. Employee asserted that while she was asked about her version of the altercation in the restroom, management did not ask about her well-being. Employee testified that on March 1, 2024, Cobb sent an email to her requesting that she report to her office at 8:00 a.m. Employee said she was issued a Notice of Termination during that meeting with Cobb. Employee averred that she informed Cobb that she disagreed with the removal because she did not physically assault anyone but had a verbal altercation with the women. Employee stated that she felt disappointed and explained that prior to the incident, she constantly endured unfair treatment and worked in a hostile work environment. Tr. Vol I. pgs. 302- 304.

Employee believed that Agency should have conducted a full investigation by retrieving surveillance in the hallway. She acknowledged that surveillance in the restroom would not be available because there were no cameras in the restroom. Employee also opined that Agency should have conducted a mediation between the employees and if a true assault had taken place, Agency should have contacted the police. Tr. Vol I. pg. 321. She stated that if Agency could prove beyond a reasonable doubt that a physical altercation transpired, a reasonable punishment would be justified. Tr. Vol I. pg. 353. Employee testified that while in her vehicle, her husband made a U-turn on M Street twice. Tr. Vol I. pg. 337. Employee admitted that instead of exiting their vehicle and approaching Marshall, they could have continued to drive away. Tr. Vol I. pg. 340. Employee stated that she regretted the entire incident. Tr. Vol I. pg. 344.

According to Employee, she disconnected the call with the nurse from her son's school, before she used profanity by calling Marshall and Walton old bitches and exchanging other derogatory names. Tr. Vol I. pg. 348. Employee stated that she could not recall the length of time that she argued with Marshall and Walton in the restroom. Tr. Vol I. pg. 351.

Employee provided that for her to exit the restroom she would have had to walk through Marshall and Walton, and she would not have been able to simply leave. Tr. Vol I. pg. 355. Employee testified that she attempted to leave the restroom when she ended the call with her son's nurse; however, Marshall and Walton were laughing at her and making derogatory remarks. Employee stated that because they were in a hostile argument, she no longer felt comfortable walking past them to exit the restroom. Tr. Vol I. pgs. 356-357. Employee testified

that she was thirty-three years old and a height of five feet two inches. She agreed that Walton was older than her, but provided that they were the same height. Tr. Vol I. pg. 364.

**Volume II (Vol II.): March 27, 2025**

**Agency's Case-in-Chief**

Gabriel Robinson ("Robinson") Tr. Vol. II. pgs. 6-39.

Robinson is Agency's Director and the deciding official in Employee's removal. Robinson explained that he reviewed information from the investigation report, statements from all parties involved, the guidelines of Chapter 16 of the District Personnel Manual ("DPM"), Agency's employee handbook, and the *Douglas* factors to make his determination. Tr. Vol. II pgs. 6-9. Robinson testified that Cobb was the proposing official in the matter. He explained that Cobb drafted a letter and recommended termination. Tr. Vol. II pg. 10. Robinson said he was the deciding official and he agreed that Agency's removal action was warranted because Agency has a zero policy for physical contact. He further explained that as director, he was responsible for maintaining a safe workplace environment. Tr. Vol. II pgs. 12-14.

Robinson stated that video surveillance was part of his decision to terminate Employee. Tr. Vol. II pg. 20. He testified that the integrity division does not always conduct the investigations for incidents at Agency. He stated that he was unsure where the integrity division was on the day of the current incident. Tr. Vol. II pg. 23. Robinson reiterated that he relied on witness statements, the statements of Employee, Marshall, and Walton, Chapter 16 of the DPM, the table of penalties, the *Douglas* factors, the employee handbook and Employee's signature acknowledging that she received the handbook and was responsible for knowing the contents of the handbook to make his final decision. Tr. Vol. II pg. 35.

Robinson testified that he reviewed the complete proposed package completed by Cobb. He asserted that in addition to the proposed packet, he reviewed the hearing officer's decision, and the responses made by Employee refuting the discipline. Robinson provided that while he reviewed the video surveillance, there were no video cameras in employee restrooms to protect the privacy of all employees; thus, he was unable to physically review the altercation. Tr. Vol. II pgs. 36-37. Robinson further stated that there were no cameras or audio recordings in the hallway when the employees exited the restrooms. Tr. Vol. II pg. 38.

Robinson recalled Employee speaking to him prior to the February 23, 2024, incident. He stated that Employee informed him that she was considering filing an Equal Employment Opportunity Commission ("EEOC") complaint because she was unhappy with the work environment. Robinson stated that he encouraged Employee to go through the chain of command to address her concerns. Tr. Vol. II pgs. 31-33.

Keara Davis ("Davis") Tr. Vol. II pgs. 45-62.

Davis testified that when she was on her break, she saw Marshall talking to Douglas. Davis said she also saw Employee in her vehicle drive up and down M Street approximately

three (3) or four (4) times. Davis asserted that she offered to drive Marshall to the train station; however, Marshall declined the ride, so Davis walked with her to the station as a companion. Davis explained that Employee's vehicle pulled over towards the curb and Employee's husband, who was the driver of the vehicle, exited first. Davis stated that Employee's husband was combative and used profanity towards them. Davis testified that Employee also exited the vehicle but remained near her door and did not approach them on the sidewalk as her husband did. She recalled that Employee called Marshall an old bitch. Tr. Vol. II pgs. 48-53.

Davis recalled a police officer approaching them to inquire about what happened. She stated that she presumed that the officer saw the altercation. Davis testified that when Employee and her husband saw the police they returned to their vehicle and made a U-turn on M Street. She cited that Employee and her husband were pulled over by the same officer who approached them. Davis asserted that as soon as Employee drove away, Hickson arrived and directed Davis to return to the office. Tr. Vol. II pgs. 54-56.

Davis testified that Marshall refused her offer to drive to the train station because Marshall stated that she was not afraid of Employee. Tr. Vol. II pg. 57. She further testified that once Employee's husband approached them, Marshall pulled out her knife because Employee's husband was combative when he approached them. Davis explained that she tried to diffuse the altercation by asking Employee to get her husband to get into their vehicle and she pulled Marshall away from Employee's husband. Davis also stated that this incident took place in front of the police station. Tr. Vol. II pgs. 58-59. Davis asserted that while she was fearful of the altercation that transpired, she cited that Marshall said she was not afraid. Tr. Vol. II pg. 62.

#### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW<sup>6</sup>

Pursuant to OEA 631.2, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Furthermore, the District Personnel Manual ("DPM") regulates the manner in which agencies in the District of Columbia administer adverse and corrective actions. DPM § 1602.1 provides that disciplinary action against an employee may only be taken for cause. According to the Proposed Removal and Final Agency Decision – Separation, Agency terminated Employee pursuant to 6B DCMR § 1605.4(a).<sup>7</sup>

#### ***1) Whether Agency, in its administration of this action followed all applicable District of Columbia Laws, rules and regulations.***

Agency cited in its April 26, 2024, Final Agency Notice and its March 1, 2024, notice of Proposed Removal that Employee was terminated pursuant to 6B DCMR § 1605.4(a). Specifically, the final and the notice of proposed removal indicated as follows:

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<sup>6</sup> 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").

<sup>7</sup> Answer to Petition on Behalf of the Department of Motor Vehicle, at Tab 8 and Tab 11 (June 5, 2024).

“Charges; (6B DCMR § 1605.4(a))

Proposed Action: **Removal**”

To support this charge, Agency asserted in the notice of Proposed Removal as follows:

“**Disciplinary Cause:** This action is being proposed for the following reasons:

On February 23, 2024, [Employee] was involved in a verbal and physical altercation with another Employee while on duty. [Employee] was involved in a heated exchange with [Marshall], while both were in the bathroom. Tension rose as they both spewed derogatory remarks to each other. Another employee, [Walton], who was also in the bathroom, was in the middle trying to get both employees to go their separate ways. However, while Walton tried disengaging the two employees [Employee] began pushing on Walton’s back. She tried to engage in a physical assault by swinging her arms trying to hit Ms. Marshall. Ms. Walton was in the middle, taking the brunt force of these actions while trying to keep them separated. [Employee] threatened Ms. Marshall tell her to have “her daughter come up to the DMV to fight”. The heated exchange moved into the hallway, [Employee] was heard not wanting to leave the situation and continued to engage with Ms. Marshall.

After being instructed to leave the building [Employee] waited in the parking lot with her acquaintances for 20 minutes until Ms. Marshall exited the building. Ms. Marshall was approached and harassed while leaving the building.”<sup>8</sup>

As previously noted, Employee was terminated pursuant to 6B DCMR § 1605.4(a). However, for the reasons discussed below, the undersigned finds that Agency failed to specifically enumerate its actions as required by the DCMR. The undersigned finds that there are four (4) subsections for which a charge could be assessed under 6B DCMR § 1605.4(a). The different subsections under 6B DCMR § 1605.4(a) - Conduct prejudicial to the District of Columbia government, include: “(1) Conviction of any felony; (2) Conviction of any criminal offense that is related to the employee’s duties or his or her agency’s mission; (3) Conduct that an employee should reasonably know is a violation of law or regulation; and (4) Off-duty conduct that adversely affects the employee’s job performance or trustworthiness, or adversely affects the employing agency’s mission or has an otherwise identifiable nexus to the employee’s position.” Agency failed to specify which of these four (4) specifications it relied on for the current adverse action. Moreover, none of the four (4) subsections under 6B DCMR § 1605.4(a) support the verbal and physical altercation as described in the disciplinary cause in the notice of Proposed Removal.

This Office has held, and the D.C. Superior Court has affirmed that an agency’s failure to specify/identify the charges underlying a proposed termination, deprives employees of the notice

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<sup>8</sup> *Id.*

to which they are entitled and the opportunity to appropriately defend themselves.<sup>9</sup> The D.C. Superior Court held in accordance with *Office of the D.C. Controller v. Frost*,<sup>10</sup> that “an employer is required to provide an employee, against whom an adverse action is recommended, with advance written notice stating any and all causes for which the employee is charged and the reasons, specifically and in detail, for the proposed action.”<sup>11</sup> Further, the OEA Board has held that when there are different charges that carry different penalties, an employee must be given appropriate notice of those underlying charges in order to be able to adequately be able to refute them. The Board found that a failure to specify these charges deprives employees of the opportunity to oppose the proposed disciplinary action.<sup>12</sup>

As previously noted in the instant matter, 6B DCMR § 1605.4(a) includes four (4) different actions for which discipline could be assessed and the penalty range for each of the charges is different. For instance, the penalty for a first offense under 6B DCMR § 1605.4(a)(1) – “conviction of a felony” would be removal in accordance with the Table of Illustrative Actions (“TIA”) in 1607.2(a)(1). Whereas the penalty for a first offense under 6B DCMR § 1605.4(a)(3) – “Conduct that an employee should reasonably know is a violation of law or regulation” would range from reprimand to removal in accordance with the TIA in 1607.2(a)(4). Additionally, the penalty for a first offense under 6B DCMR § 1605.4(a)(4) - “Off-duty conduct that adversely affects the employee’s job performance or trustworthiness, or adversely affects the employing agency’s mission or has an otherwise identifiable nexus to the employee’s position” would range from Counseling to 30-day suspension, in accordance with the TIA in 1607.2(a)(5). Based on the above, and because 6B DCMR § 1605.4(a) is a broad provision that covers many different causes of action, the undersigned finds that Agency’s use of 6B DCMR § 1605.4(a) without specific enumeration does not meet the appropriate standard of notice for the charge being assessed.

## ***2) Whether Employee's actions constituted cause for adverse action***

Assuming *arguendo* that Agency referenced the correct DCMR provision in the notice of Proposed Removal and/or the Final Agency Decision, as discussed below, I find that Agency has not met its burden of proof for 6B DCMR § 1607.2(a)(15) – “Assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property or while on duty.” As such, Agency cannot rely on this cause of action to discipline Employee.

Assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property or while on duty.

Agency argues in its submissions to this Office that Employee was terminated pursuant to 6B DCMR § 1607.2(a)(15). Agency contends that Employee violated 6B DCMR § 1607.2(a)(15)

<sup>9</sup> *Office of the Attorney General v. Office of Employee Appeals*, D.C. Superior Court 2019 CA 5286 P(MPA) Pages 5-6. (July 16, 2020). See also. *Shireea Davis v. District Department of Transportation*, OEA Matter No. 1601-0054-19 (January 14, 2021).

<sup>10</sup> 638 A.2 657, 662 (D.C. 1994). 6B DCMR § 1618.2(c) requires an employer to provide the employee with written notice of “[t]he specific performance or conduct at issue.”

<sup>11</sup> *Id.*

<sup>12</sup> *Rachel George v. Office of the Attorney General*, OEA Matter No. 1601-0050-16 Opinion and Order on Petition for Review (July 16, 2019).

– “Assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property or while on duty.” In support of this cause of action, Agency cited in the notice of Proposed Removal that “On February 23, 2024, [Employee] was involved in a verbal and *physical altercation* with another Employee while on duty. ... Another employee, [Walton], who was also in the bathroom, was in the middle trying to get both employees to go their separate ways. However, while Walton tried disengaging the two employees *[Employee] began pushing on Walton’s back. She tried to engage in a physical assault by swinging her arms trying to hit Ms. Marshall.* Ms. Walton was in the middle, taking the brunt force of these actions while trying to keep them separated. ...” (Emphasis added).

Employee stated in her written statement to Agency management on the day of the incident that “.... At that moment, [Marshall] walks up to me but [Walton] held her back as she’s screaming... [Marshall] is trying to run up to me in my personal space but [Walton] has been holding her back the whole time....”<sup>13</sup> Employee testified during the Evidentiary Hearing that Marshall walked towards her in the bathroom and Walton stepped in between them to prevent the altercation. Tr. Vol I. pg. 283. Employee stated that Marshall attempted to approach her while she was still on the phone and that she did not raise her hand or swing her arms. Tr. Vol I. pg. 284.

Marshall submitted a written statement of the current incident to Agency management on February 25, 2024 wherein, she stated that “... we started arguing calling each other bitches... while she is doing all this talking she was all over [Walton’s] back acting like she was going to hit me and I said move [Walton] and [Walton] pushed me and told me to be quiet and leave out the bathroom...”<sup>14</sup> Marshall testified during the Evidentiary Hearing that she and Employee engaged in a verbal altercation, yelling and using profanity toward one another. Marshall stated that she felt nervous and scared because she felt threatened in the workplace. Tr. Vol I. pgs. 85-89. Marshall also testified that she feared that Employee might physically harm her while they were in the restroom. Marshall stated that Walton tried to diffuse the situation between them because Employee attempted to harm her by swinging her arms approximately three (3) or four (4) times. But Marshall cited that she did not witness Employee assault Walton. Tr. Vol I. pgs. 126-127.

Walton stated in her written statement provided to Agency management on the same day of the incident that Employee was “on my back, reaching and leaning trying to swing towards Marshall. I’m standing in front of Ms. Marshall telling her don’t say anything, just wash your hands... [Employee] continued to go towards Ms. Marshall. That’s when I pushed Ms. Marshall back so that [Employee] couldn’t hit her or get in her face.”<sup>15</sup> She stated during the Evidentiary Hearing that Employee hit her back and shoulder in an attempt to physically harm Marshall.

The D.C. Court of Appeals in *Stroman v. United States*,<sup>16</sup> defines assault as “(1) an attempt, with force or violence, to injure another; (2) with the apparent present ability to effect the injury; and (3) with the intent to do the act constituting the assault.” Employee maintained

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<sup>13</sup> *Id.* at Tab 4.

<sup>14</sup> *Id.* at Tab 7.

<sup>15</sup> Answer to Petition on Behalf of DMV, *supra*, at Tab 5.

<sup>16</sup> 878 A.2d 1241, 1244–45 (D.C. 2005).

that she did not assault Walton and Marshall testified that she did not witness Employee assault Walton. Additionally, Walton did not note in her written statement dated February 23, 2024, that Employee hit her back and shoulder in an attempt to physically harm Marshall. Further, while Marshall testified during the Evidentiary Hearing that she felt nervous, scared and threatened in the workplace during the restroom altercation, and that she feared that Employee might physically harm her while they were in the restroom; she indicated in her February 25, 2024, statement that she asked Walton who was between Marshall and Employee in the bathroom to move, contradicting her testimony and indicating that she was not afraid to face Employee. Additionally, Davis' testimony that Marshall told her that Marshall was not afraid of Employee during the altercation also contradicts Marshall's testimony. During the Evidentiary Hearing, I had the opportunity to assess the credibility of the witnesses, and I did not find the testimonies of Employee, Walton and Marshall to be credible. Further, Marshall and Walton have worked together for over twenty (20) years, and they were making lunch plans when the bathroom incident occurred on February 23, 2024. Additionally, there appear to be 'bad blood' between Employee and Marshall prior to the February 23, 2024, incident as Cobb testified that prior to February 23, 2024, Employee informed her that she had an issue with Marshall. Cobb explained that prior to the February 23, 2024, incident, Employee came to her office with her shop steward providing that she was trying to remain professional, but Marshall antagonized her, and she wanted to notify Cobb of this issue.

Furthermore, West testified that when she entered the restroom, "I witnessed an argument going on between three people." She did not mention witnessing any physical assault or swinging by Employee when she entered the restroom. West testified that when she entered the restroom, she tried to break Employee, Walton and Marshall up from arguing and get them to exit the bathroom, which they did. Based on the record, I find West's and Davis' testimonies to be more credible than Employee's, Walton's and Marshall's testimonies. I further find that Agency has the burden of proof in this matter, and I conclude that Agency has not shown by a preponderance of evidence that Employee assaulted Walton in the restroom on February 23, 2024. Therefore, I further conclude that Agency cannot discipline Employee pursuant to 6B DCMR §§ 1607.2(a)(15).

Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay.

Agency also argues that Employee violated 6B DCMR § 1607.2(a)(16) – "Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay." Employee admitted to engaging in a verbal altercation with Marshall. Further, West, Ashton and Hickson testified that all three (3) employees – Employee, Walton, and Marshall were arguing when they got into the hallway, and this created a disturbance in the workplace. Therefore, I find that Agency has met its burden of proof for this cause of action.

#### Agency Policies on Language and Violence

Agency also cites that Employee violated the DMV Employee Handbook which provides



that profanity has no place in the workplace and its ‘no violence’ policy. Agency avers that violation of these policies would result in disciplinary action.<sup>17</sup> As previously discussed, Agency has not established by a preponderance of evidence that Employee assaulted Marshall on February 23, 2024. However, because Employee admitted to having a verbal altercation with Marshall at work on February 23, 2024, and several witnesses testified to the incident and Employee’s use of profanity, I find that Agency can bring disciplinary action against Employee for violating its policy on ‘no profanity’ in the workplace.

**3) *Whether the penalty of termination is appropriate under District law, regulations or the Table of Illustrative Action***

Agency argues that the penalty of termination was appropriate under District laws, regulations, and the Table of Illustrative Actions. Agency cites that the penalty imposed on Employee is consistent with the penalties listed in the Table of Illustrative Actions (“TIA”) for 6B DCMR §§ 1607.2(a)(15) and 6B DCMR §§ 1607.2(a)(16).

In determining the appropriateness of an agency’s penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).<sup>18</sup> 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 Penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. In the instant matter, I find that because Agency did not meet its burden for 6B DCMR §§ 1607.2(a)(15), Agency cannot rely on this cause of action to discipline Employee. However, because Agency has met its burden for the 6B DCMR §§ 1607.2(a)(16), I find that Agency can rely on this charge to discipline Employee.

With regard to 6B DCMR §§ 1607.2(a)(16) - “Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay” the record shows that this was the first time Employee violated this cause of action. Pursuant to the TIA, DCMR §1607.2(a)(16), the penalty for a first offense ranges from ‘Counseling to 15-Day Suspension’. Because Agency terminated Employee instead of suspending her, I find that Agency abused its discretion, and it did not comply with 6B DCMR §1607.2(a)(16), as termination is not within the penalty range under 6B DCMR §1607.2(a)(16).

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<sup>17</sup> See Answer to Petition on Behalf of DMV, *supra*, at Tab 1, pgs. 17-19.

<sup>18</sup> See also *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

Nonetheless, as mentioned above, the final agency decision does not include a charge for 6B DCMR §1607.2(a)(16). Instead, Agency charged Employee with violating 6B DCMR § 1605.4(a) in the final agency decision. As previously noted, 6B DCMR § 1605.4(a) is a broad provision that covers many different causes of actions. Therefore, I find that Agency's use of 6B DCMR § 1605.4(a) without specific enumeration does not meet the appropriate standard of notice for the charge being assessed. Thus, I also find that Agency did not have cause for adverse action against Employee and the penalty of termination is inappropriate under the circumstances.

### ORDER

Based on the foregoing, it is hereby ORDERED that:

1. Agency's adverse action of termination is hereby **REVERSED** and Employee shall be **REINSTATED** to her previous position of record.
2. Agency shall reimburse Employee all back-pay, and benefits lost as a result of the adverse action.
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.  
Senior Administrative Judge