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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	OEA Matter No.: 1601-0052-19
	)	
Employee	)	
	)	Date of Issuance: August 30, 2021
v.	)	
	)	ARIEN P. CANNON, ESQ.
METROPOLITAN POLICE DEPARTMENT	)	Administrative Judge
Agency	)	
	)	
	)	

Crystal M. James, Esq., Employee Representative  
Teresa Quon Hyden, Esq., Agency Representative  
Anna Kent, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on May 30, 2019, challenging the Metropolitan Police Department’s (“Agency” or “MPD”) decision to suspend him for fifteen (15) days, with five days held in abeyance, from his position as a Police Officer. Agency filed its Answer on July 3, 2019. The undersigned was assigned this matter on November 7, 2019.

A prehearing conference was convened on January 13, 2020. An evidentiary hearing was initially scheduled for March 24, 2020; however, due to the COVID-19 pandemic and the District of Columbia’s State of Emergency, the evidentiary hearing was rescheduled several times and was ultimately held on May 5<sup>th</sup> and 10<sup>th</sup>, 2021. The parties have submitted their written closing briefs and the record is now closed.

**JURISDICTION**

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

## ISSUES

1. Whether Agency had cause to take adverse action against Employee for: Neglect of duty to which assigned, or required by rules and regulations adopted by MPD; and
2. If so, whether the Agency's decision to suspend Employee for fifteen (15) workdays, with five days held in abeyance, was the appropriate penalty under the circumstances.

## BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.<sup>1</sup> "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.<sup>2</sup>

## SUMMARY OF TESTIMONY

The following represents a summary of the relevant testimony given during the evidentiary hearing held on May 5, 2021, and May 10, 2021, as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding.<sup>3</sup> During the evidentiary hearing, I was able to observe the witnesses' poise and demeanor. As a result, I was able to determine the credibility of the witnesses.

### Agency's Case-in-Chief<sup>4</sup>

#### **Zeb Barcus ("Barcus")** Tr. Vol. I, pp. 9-138

Barcus has worked for MPD for approximately 13 years and is currently a lieutenant with the Narcotics and Special Investigations Division. Barcus has been a lieutenant since October of 2018, and has served in many capacities, including managing officers and sergeants within police service area (PSA) 504, handling community issues, and assuming watch commander duties. As a watch commander, Barcus oversees the three shifts in the Fifth District and handles incidents and issues that arise during these time frames. Watch Commander shifts run from 1:00 p.m. to

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<sup>1</sup> 59 DCR 2129 (March 16, 2012).

<sup>2</sup> OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

<sup>3</sup> This evidentiary hearing was convened virtually via WebEx. Tr. Vol. 1 denotes the first day of the hearing, May 5, 2021, while Tr. Vol. 2. denotes the second day of the hearing, May 10, 2021. The summary of testimony reflects the witnesses' testimony as of May 5 and May 10, 2021—the dates of the evidentiary hearing.

<sup>4</sup> The parties provided a joint exhibit list which includes Bates Stamps. The Table of Contents for the Joint Exhibits list Exhibits 1-15; however, the associated Bates Stamp number will be referenced throughout the decision in identifying exhibits.

9:00 p.m.; 9:00 p.m. to 5:00 a.m.; and 5:00 a.m. to 1:00 p.m. Watch Commander times are staggered from the patrol officers shifts to avoid having watcher commanders change over at the same time as the patrol officers. Barcus also assumed duties of investigating members for allegations of misconduct. He has performed approximately 50 to 60 investigations in his capacity as a lieutenant. The instant case is the only case he has investigated for a failure to take a missing persons report. As an officer, Barcus took approximately 25 missing person reports.

The instant case surrounds the investigation of a call for service regarding a missing person at the Fairfield Inn hotel. MPD received a call on October 1, 2018, and Employee and his partner happened to already be on scene of where the reported person was missing. A short time later, Employee and his partner cleared the call without taking a report. Approximately seven or eight hours later, the same call regarding a missing person came in and was handled by a different officer—Officer Carrie Mills (“Mills”). Mills took a missing person report after speaking with the same complainant who called earlier in the day.

Barcus testified about MPD General Order 304.03, which addresses missing persons reports.<sup>5</sup> In this order, there are three categories for a critical missing person: juvenile under 15 years of age, an elderly person over 65 years of age or a mental health consumer, and those who at the discretion of the Watch Commander are deemed to be a critical missing person. Barcus stated that the first two categories do not give officers discretion to decide whether someone is a missing person. Under part four of this order, there is no minimum time requirement that a person must be missing before a missing persons report can be prepared. The order requires that members “document, investigate, and follow up on all reports of missing persons in accordance with [the order].”

The order also requires members to document the name of the missing person in a PD 251 and 252 forms, which document the narrative of the missing persons report. The PD 251 form is the public narrative while PD 252 form is the internal narrative. Members are also required to contact the Investigative Services Bureau and Youth Investigations Division regarding all critical missing persons. Despite the name, the Youth Investigations Division is for all missing persons, not just juveniles.

When officers first respond to a call for a missing person, they are required to interview the reporting person (complainant) and attempt to ascertain information regarding the missing person based off an extensive list provided in the General Order. The information obtained by the officer is generally documented in MPD’s report management system—Cobalt—and through an officer’s body camera. After obtaining this information, officers should also canvass the area to look for the missing person. Barcus also testified that officers should make phone calls to any place a missing person may be such as hospitals, the medical examiner’s office, the morgue, or cellblocks. Officers could also seek to locate a “John Doe” at these locations based on a physical description. Officers should also check the Cobalt system which could help an officer determine the whereabouts of the missing person and any other additional information that could assist in locating the individual.

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<sup>5</sup> See Joint Exhibit 1.

Barcus's investigative report in this matter is marked as Joint Exhibit 1. The report provides a chronology of the events which he was assigned to investigate which revealed that Employee and his partner—Officer Jones—were already at the hotel when they were dispatched to respond to a missing persons report. They spoke with the complainant/reporting individual and cleared the call with no report taken. Approximately seven hours later, another call was received regarding the same missing person in which Mills responded. Officer Mills notified her supervisor, Sergeant Jevric (“Jevric”), who was aware that a missing persons call was received earlier in the day and determined that Employee's response to the initially call amounted to a neglect of duty. Based on Mills' investigation, she produced a missing person report.

Barcus included Officer Mills' report as an attachment in his final investigative report. Barcus describes Mills' report as detailing the proper procedure for dealing with a missing persons call. During his investigation, Barcus also conducted a Question and Answer (“Q & A”) session with Employee to clarify some statements made in Employee's report. Specifically, Barcus attempted to figure out why Employee and Jones did not believe there was a missing person and that a missing person report was not warranted despite being on the scene and speaking with the complaining witness. Barcus also attempted to understand their interaction with the complaining witness when he approached them in their police cruiser and what this individual told them. Because the complaining witness was unable to provide substantial information about the missing person and because the officers were advised that the reported missing person could come and go as he pleases, the officers did not believe that a missing persons report was warranted.

According to Barcus, the crux of the issue in this case was that Employee and his partner had a duty to find out the information that the complaining witness was unable to provide. Even if the officers were unable to draw this information from the complaining witness, they needed to show measures by which they attempted to do so.<sup>6</sup> Because the complaining witness was an employee of a company hired to provide services to the missing person, Barcus felt that Employee would have been able to ascertain the pertinent information to more clearly identify the missing person with a “shallow investigation.”<sup>7</sup> Barcus further felt that Employee should have contacted a sergeant and followed a lead that the missing person may have gone to visit a nearby credit union.

Barcus also spoke with Mr. Tekuh, the complaining witness, to obtain a statement. Mr. Tekuh reported that he attempted to make a missing person report earlier in the morning after he was unable to locate the missing person. After being unable to locate the missing person, Mr. Tekuh called about seven hours later to make a missing person report again. Barcus concluded that Employee and his partner did not fulfill their responsibility in responding to the missing person call on October 1, 2018. He concluded that Employee and his partner neglected their duty to find the pertinent information of the missing person and to treat the situation with a higher level of seriousness.

On cross-examination, Barcus testified that even if you do not have the missing person's full name or date of birth, that a report could be made for a “John Doe.”<sup>8</sup> Barcus acknowledged that an officer may not need to make a missing person report after responding to a call if an officer

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<sup>6</sup> Tr. Vol. 1 at 87.

<sup>7</sup> Tr. Vol. 1 at 87.

<sup>8</sup> Tr. Vol. 1 at 113.

is able to confirm or finds that the person is in fact not missing, and if they find them immediately upon a canvass or through other means. Barcus further testified that there needs to be an established relationship to warrant making a missing person report.<sup>9</sup> In the instant case, the missing person was the client of the home aide who reported the individual missing.<sup>10</sup>

Barcus stated that if Employee had entered the missing person's name, J. Ford ("Ford")<sup>11</sup>, into the Cobalt system, it would have provided him a good amount of information to initiate the process of generating a missing person report. Entering the name into Cobalt would have shown incidents and offense reports for anybody with the name entered, previous addresses, phone numbers, where the individual was known to hang out, and other relevant information.

**Officer Carrie Mills ("Mills")** Tr. Vol. 1 pp.140—215

Officer Mills has been employed with MPD for approximately five years and has been with the 5<sup>th</sup> District for the duration of her tenure. Mills was assigned to Police Service Area ("PSA") 503 and 506 and at the time of the incident in the instant case, she was assigned to PSA 503. She describes PSA 503 as largely residential with a lot of senior homes, older families, group homes, and shelters. While assigned to PSA 503, Mills prepared "plenty" of missing persons reports and attributed the high number to the population of the service area.<sup>12</sup>

Mills responded to a call on October 1, 2018, around 9:00 p.m. at the Fairfield Inn on New York Avenue for a missing person. Mills was working the evening shift which ranges approximately from 2:00 p.m. to 12:30 a.m. Mills' body camera footage which captured her responding to the call and her interaction with those on the scene is capture in Joint Exhibit 8. From the footage, Mills was able to identify the complaining witness, Mr. Tekuh, and another aide as his co-worker. Mills was advised by Mr. Tekuh that the missing person stepped outside to smoke a cigarette and never returned. Mr. Tekuh then went to check different stores in the area looking for Ford. Around 8:30 a.m. or 9:00 a.m., Mr. Tekuh called the police and the responding officers (Employee and Officer Jones) told Mr. Tekuh that they saw Ford earlier and that he was not missing and that "it'll be okay."<sup>13</sup>

Despite not having Ford's date of birth initially, Mills testified that it was not appropriate to close the call out without taking a missing person report because she still had to investigate and get as much information as possible. To achieve this objective, Mills, along with Mr. Tekuh and the other aide, went inside the hotel to go to Ford's room. While waiting for the hotel staff to open Ford's room, Mills spoke with dispatch over the radio and asked what happened earlier in the day when the call came in for the same missing person. Dispatch informed Mills that there was no report made from the earlier call. Mills testified that a missing person report is mandatory and that you cannot clear a missing person call with no report. Mills was "shocked" that the call earlier in the day was cleared with no report.

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<sup>9</sup> Tr. Vol. 1 at 126.

<sup>10</sup> Tr. Vol. 1 at 127-128.

<sup>11</sup> The reported missing person's full name is being withheld to protect their identity.

<sup>12</sup> Tr. Vol. 1 at 143.

<sup>13</sup> Tr. Vol. 1 at 159.

When Mills went into Ford's room with Mr. Tekuh, there were bags in there that were not in the room when Mr. Tekuh came back to the room around 2:30 p.m. Based on this, Mills and Mr. Tekuh surmised that Ford had returned to the room at some point; however, Mill still did not close out the call because no one was able to confirm if it was in fact Ford who dropped the bags off and no one confirmed seeing Ford after the initial missing person call earlier in the day.<sup>14</sup>

Mills testified that whether Ford's date of birth was known or not, a missing person reported was necessary which is why she asked about Ford's clothing so that she could include the description in a lookout notice. While in Ford's room, Mr. Tekuh's supervisor was on the phone and was able to provide Mills with a date of birth, confirmed that he had a medical condition, and provided a physical description. The supervisor also stated that Ford was a wanderer and that he had wandered off two days prior, but that this was the longest he had ever been missing.

After speaking with Mr. Tekuh's supervisor to gain more information on Ford, Mills went to her car to call the area hospitals, local police districts, and the morgue to make sure that they had not encountered Ford. Mills also checked the Cobalt system to see if there was any other helpful information regarding Ford. When she typed in Ford's name, quite a few different profiles populated, and Mills saw where MPD had encountered Ford on numerous occasions. The profiles and reports in the Cobalt system included addresses where MPD had encountered Ford on prior occasions and Mills had other officers to check those locations for Ford which ended with negative results.

After Mills made calls to area hospitals, police districts, and medical examiner's office, per MPD's policy, she called a sergeant to the scene to advise on the next steps in the process. In this case, Sergeant Jevric responded to the scene. After Mills left the scene, she typed up a missing person report for Ford which is included in Joint Exhibit 1, Attachment 1. The end of the report includes notes from MPD officers updating the report and stating that Ford was located the following morning at 7:15 a.m. which caused the report to be closed.

**Sergeant Enis Jevric ("Jevric")** Tr. Vol 1. pp. 217—257

Jevric has been with MPD for 14 years and is currently a sergeant in the Fifth District, where he has worked since 2014. In this capacity, Jevric's general duties include supervising officers in the field, conducting roll call, and checking reports. The instant case was the first time Jevric had to draw Incident Summary ("IS") numbers for an investigation of an officer and the first time drawing IS numbers for a missing person incident.

Jevric was dispatched to the scene as a supervisor at Mills' request. Mills advised Jevric that she responded to a missing person call and that earlier in the day a call came in for the same missing person, but a report was not taken by the responding officers. Jevric spoke with the complaining witness, Mr. Tekuh, who essentially restated what had already been relayed to Mills. Jevric stated that it was a "shocker" that the officers who responded earlier in the day cleared the call without taking a report. He stated that the responding officers were supposed to take a report, canvass the area, broadcast a lookout, check area hospitals, and call a sergeant to the scene.

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<sup>14</sup> Tr. Vol. 1 at 169.

Jevric has supervised approximately 25 to 50 missing persons reports as a sergeant. Missing person calls are common in the Fifth District because of the population and the number of group homes, shelters, and elderly population that make up the district. Once on the scene, Jevric obtained the contact information for Ford's brother from the caseworkers and contacted him. Ford's brother had not seen Ford in a year or so and was unable to provide any pertinent information in locating him.

Jevric drew IS numbers because he felt it was a neglect of duty on Employee's part when he did not take a missing persons report when responding to the call earlier in the day. Jevric felt that Employee should have taken additional steps and measures to fully investigate the call of the missing person.

On cross examination, Jevric testified that the statement he obtained from Mr. Tekuh was verbal and captured on his body worn camera.

**Hobie Hong ("Hong")** Tr. Vol. 2 pp. 4—48

Hong currently serves at the Director for the Disciplinary Review Division for MPD and has held this position since March of 2019. The Disciplinary Review Division oversees all aspects of the disciplinary process for MPD. Hong oversees all investigations that are forwarded to his office for review to determine the appropriate discipline and in turn will issued a Notice of Proposed Adverse Action. This notice serves as a recommendation as to what the appropriate discipline should be for an employee.

Hong testified about MPD's General Order 120.21, which is a Table of Offenses and Penalties for various charges that may be imposed against sworn members. The appropriate range for a first violation of neglect of duty ranges from a reprimand to removal. Hong also testified about Employee's previous discipline which stemmed from a May 25, 2016, charge for violating orders and directives from the Chief of Police in which a two-day suspension was issued, with one day held in abeyance. Hong testified about the analysis of the Douglas factors performed by his predecessor in issuing the instant adverse action against Employee. Ultimately, in the instant case, Agency's final action was a 15-day suspension with five days held in abeyance.

On cross examination, Hong stated that the Director of the DRD determines whether a Douglas factor is mitigating, aggravating, or neutral.

**Employee ("Employee")** Tr. Vol. 2 pp. 52—141

Employee has been employed with MPD for 22 years and has been with the Fifth District for the duration of this time. On October 1, 2018, Employee was assigned to police service area 503 and has served this area for 10 years. Officer Jones has been Employee's partner for ten plus years. Over the course of his career, Employee has responded to over 50 calls and reports for missing persons, which is a common call received in the Fifth District.

Employee described the incident on October 1, 2018, giving rise to the instant case: he and his partner were dispatched for a missing person at the event location, which was a hotel. Employee and his partner frequented this hotel for breakfast and ate their lunch there which allowed them to establish a relatively good rapport with the staff. At the time the missing person call came in, Employee and his partner were already at the hotel on a restroom break. After exiting the restroom, Employee and his partner attempted to locate the complaining witness. They walked around the lobby and the dining area for approximately 15 minutes but were unable to locate the complaining witness. Employee and his partner stood around and waited to see if anyone would present themselves as the individual who reported a missing person. No one approached and no one was at the front desk of the hotel, so they were unable to ask if anyone there called about a missing person.

Employee and his partner then canvassed the front of the hotel looking for the complaining witness. After being unable to locate a complaining witness, they returned to their scout car. As they were returning to their scout car, Employee and his partner communicated with dispatch and “cleared the scene” indicating that because there was not complainant, there was no report.<sup>15</sup>

Employee testified about Joint Exhibit 1, Attachment 6 (p. 42), which is the dispatcher’s run sheet cataloging the events surrounding the call. The initial missing person call came in at 12:47 p.m. At 1:13 p.m.<sup>16</sup>, an “alarm timer extended” is notated which is a result of dispatch checking in on the responding officers every 30 minutes to see if an extension is needed for that particular scene. From 12:47 p.m. to 1:13 p.m., Employee and his partner were canvassing the scene seeking to identify the complaining witness. When the dispatcher checked in with the responding officers, they responded that additional time was needed because they had not yet located the complaining witness. Sometime between 1:13 p.m. and 2:11 p.m., Employee radioed to dispatch that there was no complainant and no report. They radioed in “10-8” indicating that they are clear and ready to go back in service.<sup>17</sup>

As Employee and his partner were sitting in their scout car a young gentleman, later identified as Mr. Tekuh, approached them and stated that he could not find his client. Mr. Tekuh identified his client as Ford but was unable to provide a date of birth. Mr. Tekuh stated several times that this was his first day on the job and was unable to provide much of a physical description other than that his client was an older black male. Tekuh also told Employee and his partner that his client could take care of himself. Employee asked Tekuh to call the agency he worked for to obtain more information on his client, Ford. Tekuh reported that the agency was unable to get any pertinent information on Ford at the time because they could not get into the file room and did not have any other information.

Tekuh also advised Employee that Ford’s friend told him that he went to the bank. Employee attempted to comfort Mr. Tekuh by assuring him that it would be okay, and that Ford would return. Tekuh stated that he was going to go to the bank to see if Ford was there and he would call them back if he was able to get any other information about his client. Employee and

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<sup>15</sup> Tr. Vol. 2 at pp. 57-58

<sup>16</sup> A 24-hour clock is used on document.

<sup>17</sup> Tr. Vol. 2 at pp. 61-62.



his partner also went to the nearby Wells Fargo to see if they were able to locate anyone who appeared disoriented or may be lost. Their search was negative.

Tekuh was provided Officer Jones' number and advised that if he was able to get in contact with his agency and get more information on his client, that he could give the officers a call. They advised Mr. Tekuh that a date of birth was needed because it was tough to do a missing person investigation without it. Employee stated that people use a lot of aliases and without a date of birth he would not be able to identify who is who in the Cobalt system.

Employee recalls leaving the scene sometime between 1:13 p.m. and 2:11 p.m. Employee's tour of duty usually ends around 3:00 or 3:30 p.m., depending on the day. The following day, Employee was advised by his partner, that another officer had to go back to the scene for a missing person call later the previous day. Based on his 22 years of experience, Employee testified that if something occurred on a previous shift that he has questions about, he would call the officer to get a clearer picture and see what is going on.

About a week or two after the October 1, 2018 incident, Employee learned that there was a disciplinary action against him and his partner when Lt. Barcus conducted a Q & A session. Employee's statement to Lt. Barcus is documented in a PD form 119 and included as part of Joint Exhibit 1.<sup>18</sup>

Employee stated that his prior charge for neglect of duty was from a family disturbance and that circumstances surrounding that case did not call for him to make an arrest. This incident involved an autistic child and Employee did not find it appropriate to arrest the child.

On cross-examination, Employee stated that he knew of Ford prior to October 1, 2018, but did not know him personally.

**Officer Isabella Jones (“Jones”)** Tr. Vol. 2 pp. 143—179

Officer Jones has been with MPD for nearly 24 years. She has served in the Fifth District for the duration of her career and has been partners with Employee for ten-plus years.

Jones described the incident on October 1, 2018: They received a call over dispatch for a missing person located at the hotel where they were already on a restroom break. Upon receiving the call, they canvassed the area for the complainant and waited about 15 to 20 minutes for someone to approach them identifying themselves as the complainant. After no one approached them they proceeded to their vehicle and in the process, cleared the assignment as “10-8, no report.”<sup>19</sup> Once Jones and Employee returned to their vehicle a gentleman approached them and stated that he was looking for his client. Jones and Employee then realized that this gentleman was the complainant.

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<sup>18</sup> See Joint Exhibit 1, Attachment 3 (Bates Stamps 30-33).

<sup>19</sup> Tr. Vol. 2 at 146.

When Jones and Employee questioned the complainant about the details of the missing person, he was only able to provide a first and last name and that he was an elderly man with grey hair. The complainant stated that it was his first day working with the missing person which prompted Jones and Employee to ask him to call the company he worked for to obtain the necessary information about his client. Despite calling the company, the complainant was still unable to provide the officers any pertinent information other than a name.

The complainant told the officers that the missing person could take care of himself. Jones testified that they did not take a report because they did not have the necessary information needed to take produce one.

Jones testified that she and Employee went to canvass the Wells Fargo location nearby because the complainant told them that someone mentioned that Ford was going to visit a credit union earlier in the day.

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The undersigned was able to examine both the testimonial and documentary evidence presented by the parties throughout the evidentiary hearing and the documents of record. Employee's fifteen-day suspension, with five (5) days held in abeyance, was based on the following:

**Charge No. 1:** Violation of General Order Series 120.21, Attachment A, Part A-14, which states, "Neglect of duty to which assigned, or required by rules and regulations adopted by the Department."

**Specification No. 1:** In that, on October 1, 2018, you responded to a report of a Missing Person however, you failed to conduct a proper and thorough investigation into the matter. This misconduct is further described in General Order 304.03, Part V.A., which states in part:

"Members responding to *all* calls for service for missing persons' involving either juveniles or adults *shall*:

1. Interview the reporting person(s) to obtain the following information:
  - a. The relationship between the reporting person and the missing person;
  - b. Name, age, date of birth, and social security number of the person;
  - c. The mental and physical health, habits, history and a description of the missing person, including physical features such as tattoos or scars, [and] a clothing description from when the person was last seen; [ . . . ]
2. Check the area hospitals and the Medical Examiner's Office in the District to determine if the missing person has been treated or admitted;

3. Search the CCN Reconciliation System for any ‘Injury to Citizen John-Jane Doe’ reports; [. . .]
4. Call the District Station and Central Cellblock [. . .] to determine if the missing person is arrested or in custody;
5. Query [the Washington Area Law Enforcement System (WALEs)] to determine if there is any additional information that could be pertinent to the investigation;
6. Canvass:
  - a. The area the missing person was last seen if different from the reporting location;
  - b. The area last located if the missing person was previously missing; [. . .]
7. Notify their supervisor; [. . .]
8. Receive from the Watch Commander a ‘critical’ or ‘non-critical’ classification;
9. Voice a look-out and request a simulcast broadcast to applicable districts; [. . .] and,
11. Prepare and submit a PD Form 251 in accordance with MPD procedures [. . .]”

See Joint Exhibit 2; See also Joint Exhibit 13 at 5-9.

### ***Whether Agency’s adverse action was taken for cause***

#### **Neglect of Duty**

It is undisputed that Employee and his partner did not complete a missing person report for Ford when they were dispatched on October 1, 2018. The extent and appropriateness of their investigation into the missing person led to a fact-finding mission which was fleshed out during the evidentiary hearing. The steps taken by the officers in investigating the missing persons call were also addressed throughout the evidentiary hearing. Employee and his partner both testified that they did not feel that they had enough information to take a missing person report. As explained below, I find that Agency established cause for a charge of neglect of duty.

After unsuccessfully attempting to locate the complaining witness for approximately 15-20 minutes and canvassing the lobby area and front of the hotel, Employee and his partner returned to their patrol car. As they were returning to their squad car, Employee radioed to dispatch, “10-8, no report”, indicating that they were clear and ready to go back in service.<sup>20</sup> While sitting in their squad car, Tekuh approached Employee and his partner and indicated that he could not find his client. Mr. Tekuh identified his client as Ford but was unable to provide any other information

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<sup>20</sup> Tr. Vol. 2 at pp. 57-58; 61-62.

other than Ford was “a black male; older guy” with gray hair. Tekuh also repeatedly stated that this was his first day on the job providing care to Ford. When Employee asked Tekuh whether his client could take care of himself and whether his client could come and go as his pleased, Tekuh responded in the affirmative to both questions.

When Tekuh could not provide any more pertinent information regarding his client, Employee asked Tekuh to call his employer to get more information about Ford. However, when Tekuh called his employer, he was told that they were unable to access the file room.<sup>21</sup> Additionally, when Tekuh told Employee that “his friend said [Ford] was going to the credit union”, Employee nor his partner asked any follow up questions about the “friend” nor did they go back inside the hotel in an effort to obtain more information about Ford.<sup>22</sup> After Employee and his partner believe they could no longer carry out an investigation because they did not have enough pertinent information regarding the missing person, they provided Tekuh with Officer Jones’ number and told him to call if he was able to obtain additional information.

Over six hours later, when Tekuh was still unable to locate Ford, Officer Mills responded to a missing person call for the same missing individual. Upon arriving on scene, Mills began to interview Tekuh regarding his call of a missing person. Mr. Tekuh informed Mills that his client had been missing since about 8:30 a.m. or 9:00 a.m. that morning and when police responded earlier they told him “it’ll be okay.”<sup>23</sup> Once Mills confirmed that a call came in earlier regarding the same missing person, she was advised by the dispatcher that no report was taken.

Upon further investigation, Mills was able to ascertain that Tekuh was Ford’s home aide, employed by a contractor with the D.C. Department of Behavioral Health (DBH). While Tekuh was initially unable to provide much useful information to Officer Mills other than the name of his client, Officer Mills directed Tekuh to show her Ford’s hotel room and requested that he call his supervisor to obtain additional information on Ford. Officer Mills was able to speak with one of Tekuh’s supervisors who provided Ford’s date of birth and other pertinent information, including that Ford was a “wanderer.”<sup>24</sup> Equipped with this information, Mills returned to her squad car and continued her investigation of Ford’s whereabouts through the use of the Cobalt system. After calling area hospitals, local police districts, and the medical examiner’s office despite no positive leads, she ultimately prepared a missing person report for Ford.

Mills’ thorough and proper investigation led to her obtaining pertinent information on Ford because she was able to speak with Tekuh’s supervisor. This same opportunity did not present itself earlier in the day when Employee and his partner were on the scene and Tekuh indicated that his employer could not gain access to the file room at the time to get information pertaining to Ford. Despite not being able to obtain this information, at a minimum, Employee could have prepared a “John Doe” missing person report or conducted a “John Doe” investigation of Ford. Employee failed to make any phone calls attempting to locate a “John Doe” or run a query in the Cobalt system. While it may have been “tough” to carry out a missing person investigation with such little information, Employee did not demonstrate any measures taken that would have helped

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<sup>21</sup> Tr. Vol. 2 at 64.

<sup>22</sup> *Id.*

<sup>23</sup> Tr. Vol. 1 at 159.

<sup>24</sup> Tr. Vol. 1 at 171.

advance the investigation. Accordingly, I find that Employee had a duty to conduct a more thorough and proper investigation of the reported missing person, and he neglected to carry out this duty as set forth in MPD's General Order 304.03

The actions taken by Officer Mills demonstrate the steps necessary in conducting a thorough and proper investigation into the missing person. Officer Mills persistence led to obtaining pertinent information, which then led her to producing a missing person report pursuant to MPD's General Order 304.03.

### **Appropriateness of the Penalty**

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). 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. Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the Administrative Judge.<sup>25</sup> The undersigned may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.<sup>26</sup> When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.<sup>27</sup> As explained above, I find that Agency had cause to take adverse action against Employee for Neglect of duty to which assigned, or required by rules and regulations adopted by MPD.

MPD General Order 120. 21, Attachment B, is a Table of Offenses and Penalties, which addresses the appropriate penalty for a Neglect of Duty charge. This table provides that the appropriate penalty for a first-time offense of neglect of duty ranges from a reprimand to removal. Here, Agency elected to issue a 15-day suspension, with 5 days held in abeyance. Based on my findings that Agency had cause to take adverse action for Neglect of Duty, I further find that a 15-day suspension, with five days held in abeyance, was within the allowable range set forth under the applicable Table of Penalties. Additionally, Agency provided a thorough analysis of the relevant *Douglas* factors in considering the appropriate adverse action in its Notice of Proposed Adverse Action, dated January 30, 2019.<sup>28</sup> Accordingly, I find that Agency appropriately exercised its managerial discretion when it elected to suspend Employee from his position.

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<sup>25</sup> See *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Joint Exhibit 2, Notice of Proposed Adverse Action; See also Joint Exhibit 3, Amended Notice of Proposed Adverse Action (undated).

**ORDER**

Accordingly, it is hereby **ORDERED** that Agency's action of suspending Employee for fifteen (15) days, with five days held in abeyance, is UPHELD.

FOR THE OFFICE:

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ARIEN P. CANNON, ESQ.  
Administrative Judge