

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

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No. 1601-0025-25
v.	)	
	)	Date of Issuance: April 23, 2026
D.C. FIRE and EMERGENCY MEDICAL	)	
SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Battalion Emergency Medical Services (“EMS”) Supervisor with the D.C. Fire and Emergency Medical Services (“Agency”). On January 21, 2025, Agency suspended Employee for 240 duty hours for violation of Agency Order Book Article VI, § 6 – Conduct Unbecoming of an Employee. Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on February 24, 2025. He asserted that the charge was derived from false pretenses and that Agency discriminated against him because of a medical condition. Moreover, Employee contended that Agency improperly considered the *Douglas* factors when

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

determining its penalty.² Accordingly, Employee sought to have the suspension action reversed with an award of back pay lost as a result of the suspension.³

Agency filed its Answer to Employee's Petition for Appeal on March 25, 2025. It argued that six employees described that while Employee was stationed at the Office of Unified Communications ("OUC"), he threw objects, smashed his computer screen, and yelled profanities. According to Agency, the employees provided that they feared that Employee was a danger in the workplace. As a result, it opined that it had cause to charge Employee with Conduct Unbecoming and to impose a 240-hour suspension from February 3, 2025, through March 14, 2025. Additionally, Agency provided that it appropriately considered the *Douglas* factors in determining the penalty. Consequently, it requested that its action be upheld.⁴

On November 6, 2025, the OEA Administrative Judge ("AJ") issued an Initial Decision. The decision initially summarized the facts and procedures that were relevant to the current matter.

² The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board ("MSPB") in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee's past disciplinary record;
- 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
- 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- 7) consistency of the penalty with any applicable agency table of penalties;
- 8) the notoriety of the offense or its impact upon the reputation of the agency;
- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) potential for the employee's rehabilitation;
- 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct.

³ *Petition for Appeal*, p. 2 and 5-8 (February 24, 2025).

⁴ *D.C. Fire and Emergency Medical Services Department's Answer to Employee's Petition for Appeal*, p. 5-13 (March 25, 2025).

However, later in the decision, the AJ referenced an employee who was an Emergency Medical Technician who failed to properly use the call procedure for sick leave. For over ten pages, he analyzed the termination action taken against another employee and not the 240-hour suspension of the Employee in this matter. Ultimately, the AJ upheld Agency's action to terminate Employee.⁵

Employee filed a Petition of Review on December 9, 2025. He asserts that the majority of the facts provided in the Initial Decision were inaccurate. Employee provides that the AJ made mistakes related to his past disciplinary history and outlined charges that were never taken against him. Additionally, he contends that the AJ made a grave error in upholding a termination action in his order, when his penalty was a 240-hour suspension. Consequently, Employee objects to the Initial Decision on the basis that the decision is based on an erroneous interpretation of statute, regulation, or policy; the decision was not based on substantial evidence; and the decision did not address all issues of law and fact properly raised on appeal.⁶

Similarly, on January 9, 2026, Agency filed a Motion for Remand. It opines that the Initial Decision does not include the analysis of the adverse action at issue in this case – the 240-hour suspension. Agency provides that pages 6-16 of the decision are a republication of an OEA decision on *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0001-24 (June 26, 2024). As a result, Agency requests that the OEA Board remand the case to the AJ to provide an analysis of the current case.⁷

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are

⁵ *Initial Decision* (November 6, 2025).

⁶ *[Employee] Appeal of Initial Decision* (December 9, 2025). Employee also raises a new argument regarding a witnesses' statement.

⁷ *Agency's Motion for Remand* (January 9, 2026).

supported by substantial evidence, then they must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.⁸ With the analysis of facts and issues of another case, this Board has determined that substantial evidence does not exist in the Initial Decision.

District Personnel Manual § 634.2 (a) provides that “. . . each Initial Decision shall contain findings of fact and conclusions of law, as well as the reasons or bases therefore, upon all the material issues of fact and law presented on the record.” As asserted by both parties, the Initial Decision does not contain facts material to the current case. The facts and analysis outlined in the Initial Decision are not consistent with Employee’s case because they clearly reference facts from an unrelated matter.⁹ Therefore, this Board is compelled to remand this matter to the Administrative Judge to consider the material issues of fact and law presented in the record. Consequently, Employee’s Petition for Review is granted, and this case is remanded to the Administrative Judge.

⁸ *Black’s Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

⁹ As provided by Employee, the Initial Decision erroneously references facts and analysis from pages 5-16. *[Employee] Appeal of Initial Decision* (December 9, 2025). Moreover, Agency correctly contends in its Motion for Remand that the Initial Decision includes the analysis from a separate case that was issued by this Administrative Judge in 2024. See *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0001-24 (June 26, 2024).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED**, and the matter is **REMANDED** to the Administrative Judge.

FOR THE BOARD:

Pia Winston, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.