THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0086-24
EMPLOYEE[1],	)	
Employee	)	
	)	Date of Issuance: October 29, 2025
v.	)	
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	Michelle R. Harris, Esq.
Agency	)	Senior Administrative Judge
	)	

Jason A. Grant, Esq., Employee Representative
Michelle Hersh, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 4, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Metropolitan Police Department's ("Agency" or "MPD") action demoting him from the rank of Lieutenant to Officer. On September 4, 2024, OEA issued a letter requesting that Agency file an Answer to Employee's Petition for Appeal. Agency filed its Answer to Employee's Petition for Appeal on October 4, 2024. This matter was assigned to the undersigned on October 4, 2024. On October 9, 2024, I issued an Order Convening a Prehearing Conference for November 12, 2024, virtually via Webex. Prehearing Statements were due on or before November 6, 2024. On October 28, 2024, Employee, by and through his representative, filed an Unopposed Motion to Continue the Prehearing Conference. Employee's counsel cited to scheduling conflicts as the reason for the request. Further, Employee noted that the parties had conferred and had agreed upon alternative dates for which to reschedule the Prehearing Conference.[2] On October 29, 2024, the undersigned issued an Order granting Employee's Motion. The Prehearing Conference was rescheduled to December 18, 2024, and Prehearing Statements were due by December 12, 2024.

On December 12, 2024, Agency filed a Joint Motion to Stay the Proceedings. Agency cited therein that a Notice of Adverse Action for termination for an unrelated matter had been levied against Employee which "may render the instant matter moot." As such the parties requested a stay of

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Employee noted that the parties agreed on December 12, 2024, as the date for Prehearing Statements and cited availability to appear for the Prehearing Conference on December 17, 2024, or December 18, 2024.

proceedings in the interest of "judicial economy." The parties requested that the Prehearing Conference be vacated, and the proceedings stayed pending the outcome of the termination matter. Upon consideration of the Motion, the undersigned issued an Order on December 16, 2024, granting the Motion, in part. The Prehearing Conference was vacated, however a Status Conference was scheduled for January 23, 2025, to discuss the status of the matter. On January 23, 2024, both parties appeared at the Status Conference as required. During the Conference, the parties conveyed that discussions related to the other matter were ongoing and may impact the disposition of the instant matter. The parties noted that additional time was needed to provide a substantive status update regarding this matter. Accordingly, on that same date I issued a Post Status Conference Order requiring the parties to submit a Status Update by February 24, 2025.

On February 24, 2025, the parties filed a Joint Status Report indicating that settlement had not been reached. Further, the parties requested that a Prehearing Conference be set for April 15, 2025, and that Prehearing Statements be due by April 7, 2025. On February 26, 2025, I issued an Order scheduling a Prehearing Conference for April 15, 2025, and Prehearing Statements were due by or before April 7, 2025. Both parties appeared for the Prehearing Conference on April 15, 2025. During that Conference, the undersigned determined that briefs were warranted. Accordingly, I issued verbal orders which were codified in an Order issued on April 15, 2025. That Order required the parties to submit briefs addressing the issues in this matter.[3] Agency's brief was due by or before May 13, 2025, Employee's brief was due by or before June 10, 2025, and Agency's sur-reply brief was due by or before June 23, 2025. Agency filed its Motion to Dismiss/Summary Disposition on May 13, 2025, Employee filed his Opposition to Agency's Motion on June 10, 2025, and Agency submitted its sur-reply by June 23, 2025, as required. Upon review of the parties' submissions, the undersigned determined that both parties needed to provide supplemental documentation based upon what was referenced in their briefs. Accordingly, on August 21, 2025, issued an Order for the parties to submit supplemental documentation. Submissions were due by or before August 29, 2025. Both parties submitted their documents in accordance with the prescribed deadline. Following the receipt and review of the parties' submissions, the undersigned determined that additional information was required. As a result, on September 17, 2025, I issued a Second Order to Supplement the Record, which required Employee to submit the General Order relied upon in his brief. Employee filed his supplemental documentation on September 19, 2025. Considering the parties' arguments as presented in their submissions to this Office, I have determined that an Evidentiary Hearing is not 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 had cause to take adverse action against Employee; and
2. If so, whether the penalty of demotion was appropriate under the circumstances and administered in accordance with all applicable laws, rules and regulations.

[3] Parties were required to address: 1) Whether Agency had cause for adverse action in this matter; (2) Whether Agency, in demoting Employee from Lieutenant to Officer, followed all applicable District of Columbia statutes, regulations, and laws; and 3) Whether the penalty of demotion was appropriate under the circumstances. Parties were also required to include copies of all regulations, case law and other documents relied upon in support of their positions/briefs. Additionally, this Order instructed both parties to include all relevant regulations, polices and/or procedures related to the supervisory roles in Special Mission Units ("SMU") Employee was serving in at the time of the adverse action.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[4]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee was a Lieutenant with Agency, who was demoted to the rank of Officer in a final letter from the Chief of Police dated August 2, 2024.[5] Prior to this demotion, Employee had served in the Seventh District and was assigned to the Crime Suppression Team ("CST"). In the Notice of Adverse Action dated February 22, 2024, Employee was provided notice for the following[6]:

> **Charge No. 1**: "Violation of General Order Series 120.21, Part VIII, Attachment "A," Part A-16, which states: "*Failure to obey orders or directives issued by the Chief of Police."*
>
> ***Specification No. 1***: In that, during the time period of June to August 2022, you failed to provide adequate supervision and management to the 7D Crime Suppression Team (CST) members who engaged in repeated misconduct which violated the laws of the District of Columbia and the United States, and the regulations of the Metropolitan Police Department (MPD). Your misconduct is further described under General Order 101.09, Duties and Responsibilities of Sworn Officials, III. F.2.g., which states, "Lieutenants shall ensure the laws and regulations governing the Department are observed and enforced and that discipline is maintained."
>
> ***Specification No. 2***: In that, during the time period of June to August 2022, you were unaware of the daily activities and operations of the 7D CST members, resulting in the members repeatedly engaging in serious misconduct while under your command. Your misconduct is described in General Order 301.02, Patrol Special Mission Units, II.A.1, which states, "At minimum, the SOP shall include an organization chart that identifies the SMU commanding official, the rank of lieutenant or above, responsible for overseeing the operations of the SMU," and the Seventh

[4] OEA Rule § 699.1.
[5] Employee has since retired from Agency.
[6] This Notice was issued by Agency's Disciplinary Review Decision ("DRD") Director Hobie Hong.

District Crime Suppression Team Standard Operating Procedures, dated May 3, 2021, section VIII.A.1.a, which states, "The Crime Suppression Team lieutenant shall monitor the daily activities of the unit."

Charge No. 2: 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, during the period of time between June and August 2022, you failed to provide oversight, supervision, and management to the members of the 7D CSTS, thereby allowing members to engage in a sustained course of misconduct without detection or intervention.

This notice cited that Employee would be demoted to the rank of Officer and levied a 20-day suspension without pay. Employee filed an appeal to the Chief of Police on July 2, 2024. On August 2, 2024, Police Chief Pamela Smith issued a letter, which maintained the demotion, but rescinded the suspension. Employee filed the instant appeal at OEA on September 4, 2024.

Jurisdiction

This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[7], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, *reduction in grade*, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) A placement on indefinite suspension for ten (10) days or more.

Agency's Position

Agency avers that its action of demoting Employee should be upheld. Agency asserts in its Motion for Dismissal/Summary Judgement that Employee's appeal "should be dismissed because he does not dispute the misconduct and was disciplined with an appropriate penalty." Agency avers that it is "undisputed that the Sergeants and Officers of the 7D CST were engaged in a pattern and practice of misconduct from June-August 2022 while Employee was the Lieutenant responsible for overseeing that unit."[8] Agency further cites that as the Lieutenant, pursuant to General Order 101.09 he was responsible "to ensure that the regulations governing the Department are being observed and enforced, yet he was completely unaware of the existences of the SOPs governing 7D CST, which plainly stated that as the Lieutenant overseeing 7D CST, he was required to "monitor the daily activities of the

[7] *See also.* Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[8] Agency's Motion for Dismissal/Summary Judgement at Page 8-10 (May 13, 2025).

unit.""[9] Agency contends that Employee failed to adequately supervise the 7D CST and "abdicated his responsibilities as the supervisor of 7D CST, failing to attend briefings or roll calls, respond to any activities on the street, or communicate with the members of 7D CST directly regarding the activities of the unit."[10] Agency maintains that "Employee was provided with Daily Activity Reports by the 7D CST Sergeants, giving him an opportunity to have some insight into the daily activities of the unit; however by his own admission, he was unfamiliar with what the reports were and did not regularly review them."[11]

Agency also cites that Employee has been a sworn member of the Department since March 2000 and was the Seventh District CST at the time of the issues that led to his discipline. Specifically, Agency cites that "in September 2022, agents with the Department's Internal Affairs Division ("IAD") were notified of serious misconduct allegation involving two members of the 7th District."[12] Agency avers that over the course of the investigation, IAD ultimately revealed "numerous incidents of misconduct involv[ing] several Sergeants and multiple officers assigned to the 7D CST that occurred between June and August 2022."[13] Agency contends that the "misconduct that ran rampant through the 7D CST from June- August 2022 under Employee's watch culminated in a criminal investigation of the members of 7D CST, including the Sergeants under Employee's direct supervision."[14] Agency notes that IAD conducted a "separate investigation into Employee specific to his role as the supervision Lieutenant of 7D CST…[b]y his own admission, Employee had very little involvement in the day-to-day operations of 7D CST, delegating to his Sergeants, who were aware of and participated in the misconduct uncovered by IAD's investigation into the unit."[15] Agency asserts that Employee did not attend roll calls, briefings, nor did he respond to activities on the street or have communication with members in the 7D CST. Agency maintains that Employee was "subject to the Orders and Directives of the Chief of Police, including General Orders ("GO") 101.09 and 301.02."

Agency asserts that GO 101.09 "outlines the duties and responsibilities of sworn official, which Employee failed to meet." Agency further contends that "given the widespread and sustained misconduct occurring in 7D CST, which also involved the participation and approval of Sergeants whom he directly supervised, Employee failed to fulfill his obligations and responsibilities as a sworn official."[16] Additionally, Agency cites that Employee also failed to follow GO 301.02, which prescribes the "expectations and requirements of the supervisors and managers of the Special Mission Unites ("SMU") such as the 7D CST." Agency maintains that Employee was not involved with the misconduct for which IAD investigated the other members of the 7D CST but asserts that had Employee acted in accordance with responsibilities and expectations of his position, he would have had insight and been able to address what had occurred.

Agency also argues that Employee's "lack of involvement in and aware of his subordinates' misconduct is proof of, not a defense to, his Neglect of Duty."[17] Agency asserts that "Employee focuses heavily on the fact that not only did he have no involvement in misconduct of the Sergeants and

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[9] *Id*. at Page 10.
[10] *Id*.
[11] *Id*.
[12] *Id*. at Page 2.
[13] *Id*.
[14] *Id.* at Page 3.
[15] *Id*.
[16] *Id.*
[17] Agency's Reply at Page 1 (June 23, 2025).

Officers under his supervision, but was completely unaware of it."[18] Agency cites that "it does not contend that Employee was involved in the pattern of misconduct nor that he was aware of it." However, Agency cites that "Employee fails to meaningfully address the undisputed fact that he was responsible for the oversight of a unit that was engaged in a widespread pattern of misconduct while under his supervision."[19] Agency also avers that Employee's "re-examination of the *Douglas* factors essentially seeks to have OEA substitute its judgment for that of the Agency, which case law expressly prohibits."[20] Agency avers that while Employee disagrees with its assessment of the *Douglas* factors, "there is no evidence to support the conclusion that the Department's decision to demote Employee was arbitrary or capricious such that it would be appropriate for OEA to overturn it." Agency maintains that it appropriately considered all the factors which determining Employee's discipline in this matter.

Agency further asserts that Employee claims that it used the wrong table of penalties in his matter, but that is incorrect. Agency avers that "the table of penalties in this matter went into effect on November 27, 2022, which was before the investigation into Employee's misconduct was initiated on October 12, 2023." Agency cites that Employee "further erroneously contends that Agency failed to identify comparators."[21] Agency notes that "while the Department's examination of the *Douglas* factors did not identify any specific comparators, DRD 611-20 was provided as a comparable case as part of the record in this matter."[22] Agency cites that in that matter, "a Lieutenant (as Employee was) was charged with Neglect of Duty (as Employee was), proposed for a suspension and demotion to rank of Officer (as Employee was) and ultimately the Chief of Police imposed only a demotion to the rank of Officer as the final penalty (as was the case with Employee)." As such, Agency asserts that "it cannot be reasonably disputed that Employee received the exact same treatment as a similarly situated employee." As such, Agency avers that its action was appropriate and consistent with all applicable laws, rules, and regulations, and that its penalty was consistent with the table of penalties and should be sustained.

Employee's Position

Employee avers that the primary issue in this matter is whether Agency "legitimately invoked and properly exercised its managerial discretion in demoting Lt. [Employee] to Officer."[23] Employee asserts that the record shows that he "had no direct involvement or knowledge of the misconduct by subordinate officers."[24] Employee also argues that MPD failed to "meaningfully consider critical mitigating factors including Lt. [Employee's] 23-year record without any similar disciplinary action prior to this matter and his demonstrated potential for rehabilitation."[25] Employee also contends that Agency's penalty in this matter "far exceeds the range of reasonableness required by law," and because of this, and unresolved factual disputes, Agency's Motion for Dismissal/Summary Judgement should be denied.

Employee further argues that Agency overlooked "critical facts showing that [Employee] neither engaged in misconduct nor acted with intent or negligence but instead was undermined by

[18] *Id.*
[19] *Id*. at Page 1-2.
[20] *Id*. citing to *Stokes v. District of Columbia*, 502, A.2d. 1006, 1011 (D.C. 1985).
[21] *Id.* at Page 3.
[22] *Id.*
[23] Employee's Opposition at Page 1 (June 10, 2025).
[24] *Id*.
[25] *Id.*

concealed actions of subordinate officers."[26] Further, Employee avers that Agency has failed to establish by preponderance of evidence that there was cause to discipline him. Employee asserts that the Agency "claims that [he] failed to monitor daily activities, citing to his unfamiliarity with certain Standard Operating Procedures (SOPs) and Daily Activity Reports."[27] Employee argues that his "contemporaneous evaluations show he met or exceeded expectations…[m]oreover several sergeants under his supervision refused to participate in the IAD investigation depriving the record of the complete testimony." Employee further cites that a factual dispute still remains as to the "extent of his supervisory efforts and knowledge, precluding summary disposition."[28]

Employee also contends that while the Agency asserts that it considered the *Douglas* factors in his matter, "a closer examination shows a mechanical application rather than a legitimate weighing of the facts."[29] To support this contention, Employee avers that Agency "failed to meaningfully consider the nature and seriousness of the offense in relation to [his] direct conduct." Employee further cites that Agency's investigation confirmed that he was "not direct[ly] involved in, nor aware of, the misconduct perpetrated by the officers and sergeants he supervised."[30] Employee maintains that IAD found "no evidence [he] participated in or knew of the "open case" scheme."[31] To this end, Employee avers that OEA has found when there is "no intentional misconduct or direct involvement, harsher penalties such as demotion are inappropriate."[32] Employee also cites to his 23 year record with no prior discipline and also avers that Agency's penalty is not "consistent with penalties imposed on similarly situated employees."[33] Employee further notes that there is no evidence that other supervisors have been demoted for similar actions. Employee also argues that his past work record along with his long career without discipline are "classic mitigating circumstances." Employee asserts that Agency held this a "neutral" *Douglas* factor, proving that Agency failed to give appropriate weight in its considerations.[34] Employee also avers that Agency "without concrete evidence" cites that the incident "eroded confidence" in his ability to supervise. However, Employee argues that his "subsequent work history rebuts this conclusory assertion." Employee maintains that "after being assigned to the Teletype Unit following investigation [he] continued to perform his duties with professionalism and competence, receiving a favorable 2023 evaluation that emphasized his effective teamwork and management skills."[35]

Employee also asserts that because Agency used General Order 120.21 that went into effect on November 27, 2022, which was after the investigation into misconduct began, Agency inappropriately retroactively applied a new table of penalties to Employee's action. Employee also asserts that demotion "exceeds what is authorized under either of the prior Table of Penalties." Employee avers that this shows that Agency's action is "inconsistent with its own internal guidelines and thus arbitrary."[36] Employee also contends that Agency did not identify comparators in its review. Employee avers that "OEA has held that disparate penalties for similarly situated employees are impermissible

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[26] *Id.* at Page 2.
[27] *Id.* at Page 4.
[28] *Id.*
[29] *Id.*
[30] *Id.* at Page 5.
[31] I*d*.
[32] *Id*. citing to *Larry Corbin v. Department of Corrections*, OEA Matter No. 1601-0140-88, 37 D.C. Reg 528 (1990).
[33] *Id*. at Page 5.
[34] *Id*. at Page 6.
[35] *Id.*
[36] *Id*. at Page 7.

absent a legitimate reason."[37] Employee maintains that "no other supervisors were demoted for similar failures of oversight – indeed, no other commanders or captains who shared oversight responsibility were disciplined at all."[38] Employee cites that the "underlying misconduct of the 7D CST was publicly reported, there is no evidence that [Employee's] name was associated with that negative media coverage."[39] Employee further asserts that the focus was on the officers and sergeants directly involved with the misconduct. As such, Employee avers that "Agency's broad invocation of "notoriety" without linking it to [Employee] individually is an improper application of this factor."[40] Employee avers that he was aware of his supervisory duties. However, he contends that the Agency "failed to produce any evidence that [he] was ever warned about deficient supervision prior to this incident or that he was trained specifically on monitoring compliance with SOPs, or was ever provided with the SOP, that he was allegedly unaware of."[41] Employee asserts that an appropriate consideration of *Douglas* factors "…requires more than general expectation; it requires evidence that the employee was clearly apprised of the specific misconduct and the resulting penalty imposed…"[42]

Employee also asserts that the Agency has "conceded" his potential for rehabilitation but categorized this as a neutral factor. Employee argues that "this mischaracterization contravenes OEA's precedent, which hold that strong rehabilitation potential- demonstrated by post-incident performance and a previously clean record – should mitigate discipline."[43] Employee also argues that Agency failed to give due consideration to the "staffing and operational challenges that burdened the 7D CST during the relevant period." Employee notes that it was documented that he "was serving double duty District Watch Commander and CST Lieutenant for several shifts during the investigative period, severely limiting his ability to supervise daily operations."[44] He further assert that the "sergeants and officers under his command actively concealed their misconduct, thwarting ordinary supervisory practices."[45] Employee also contends that Agency "summarily asserts that demotion was necessary to deter future misconduct, yet provides no analysis or evidence to support why lesser sanctions would be inadequate."[46]

Employee maintains that while the Agency avers it acted in its managerial discretion, the penalty imposed is both "excessive and inconsistent with the principle of proportionality required under the law."[47] To this end, Employee argues that "even if supervisory deficiencies occurred, demotion is a grossly disproportionate penalty in this context." He avers that his "allege failure was passive – a failure to detect others' misconduct, not active participation…[i]mposing the maximum career-ending sanction for inadvertent supervisory failure, particular absent prior discipline or misconduct, is punitive rather than corrective and undermines the rehabilitative purpose of

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[37] I*d*. citing to *Employee v. Office of the Chief Technology Officer*, OEA Matter No. 1601-0024-09 (2011), *Wilkins v. MPD*, OEA Matter No. 1601-0071-98 (2012).
[38] I*d*. at Page 8.
[39] *Id*.
[40] *Id*. citing to *Butler v. District of Columbia*, 106 A.3d. 1168 "speculative reputational harm cannot serve as an (incomplete sentence).
[41] I*d*. at Page 8.
[42] *Id.*
[43] *Id.*
[44] *Id.* at Page 9.
[45] *Id.*
[46] *Id.*
[47] *Id.* at Page 10.

discipline."[48] Employee maintains that Agency's action was improper, including the use of a Table of Penalties not enacted at the time of the alleged conduct, and as such, this action should be reversed.

ANALYSIS[49]

As was previously described, Employee was demoted based upon a charge of Failure to Obey Directives and Neglect of Duty. Employee's charges stemmed from his role during a time wherein his subordinate officers and sergeants were found to have engaged in months long misconduct in 2022, following an investigation conducted by MPD's Internal Affairs Division ("IAD"). It is undisputed that Employee ***was not*** involved in the underlying misconduct for which his subordinates were found to be a part of. (Emphasis added) Instead, Employee was charged because Agency found that he failed in his supervisory capacity and as such, was unaware of the misconduct. Specifically, Agency asserted that Employee was the Lieutenant of the 7D CST and that in his tenure, he "failed to provide adequate supervision and management to the 7D Crime Suppression Team (CST) members who engaged in repeated misconduct which violated the laws of the District of Columbia and the United States, and the regulations of the Metropolitan Police Department (MPD)." Further, Agency cited that Employee "failed to provide oversight, supervision, and management to the members of the 7D CSTS, thereby allowing members to engage in a sustained course of misconduct without detection or intervention." Agency maintained that pursuant to General Order 101.09 "Lieutenants shall ensure the laws and regulations government the Department are observed and enforced and that discipline is maintained."

Agency avers that Employee's actions, or rather, the lack thereof, constitute a neglect of duty and a failure to obey directives. Agency asserts that Employee's arguments that he was not involved and was unaware do not overcome the fact that if he had been acting as required of a member in his position, he would have been aware and been able to address the misconduct. Specifically, Police Chief Smith noted in her written response (final notice) that another Officer who was also detailed away from the 7D CST noticed discrepancies in reporting, alerting those to possible misconduct. Chief Smith cited that had Employee acted in his duties and read the Daily Reports and other assignments, he too would have recognized the irregularities that ultimately pointed to the misconduct uncovered by IAD. Employee avers that the Agency failed to address the operational and staffing challenges and maintains that he did what was required of him in his role as supervisor/lieutenant. Further, Employee maintains that the sergeants and officers involved intentionally concealed their actions, and that he was not involved in any way with their misconduct. Further, Employee asserts that Agency failed to appropriately administer this action because it utilized the General Order that became effective in November 2022, which was after the misconduct. Employee also asserts that Agency failed to conduct an appropriate *Douglas* factor review, thus evincing that Agency's actions were arbitrary and capricious. Employee also asserted that the Agency engaged in disparate treatment, as other similarly situated employees were not demoted for similar actions.

Agency asserts that Employee was not investigated until 2023, thus Employee's arguments regarding the use of the November 2022 GO is misguided. Further, Agency avers that it gave appropriate consideration to the *Douglas* factors and that in its managerial discretion, deemed that demotion was appropriate. Further, Agency maintains that while it did not identify comparators, it did

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[48] *Id*. at Page 12.

[49] 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").

identify another matter with "a Lieutenant (as Employee was) was charged with Neglect of Duty (as Employee was), proposed for a suspension and demotion to rank of Officer (as Employee was) and ultimately the Chief of Police imposed only a demotion to the rank of Officer as the final penalty (as was the case with Employee)."

Neglect of Duty/Failure to Obey Directive

OEA has consistently found that a Neglect of Duty and/or a Failure to Obey Directives results when there is a finding that an employee has failed to act as would be expected or as directed for someone in their role. In the instant matter, as a Lieutenant of the 7D CST, Employee was bound to follow the directives and instructions as outlined in General Order 101.09, 120.21 and the SOP 301.02. Upon review of the record, it is clear that while Employee was not at all engaged in the misconduct of the subordinate officers and sergeants, he failed to complete his duties in such a way that the actions of his subordinates went unnoticed. While Employee argues that the officers intentionally concealed their actions, the fact that another Officer, who conducted his duties as required was able to identify the irregularities that led to the findings of the misconduct, provide evidence that Employee's failure to do his duties as required led to his inability to notice or otherwise identify the issues occurring in the 7D CST. Even though Employee was detailed elsewhere, his responsibilities remained the same for 7D CST. The aforementioned General Orders specifically outline the required duties, and it is clear both from the record, and from Employee's own admissions that he did not complete those duties as required. Thus, I find that Agency has shown through a preponderance of evidence that there was cause to discipline Employee for these causes of action.

Use of General Order Effective November 2022

Employee avers that Agency utilized the wrong Table of Penalties in this action. He avers that the misconduct took place between June-August 2022, thus the GO that became effective November 2022 is an incorrect retroactive application of regulations in this matter. As such, he asserts that the GO made effective November 2006 is the applicable version for his disciplinary matter.[50] Agency asserts that the investigation into Employee did not occur until 2023, after the November 2022 GO became effective, thus, Employee's argument is incorrect. In the instant matter, I find that Employee's argument regarding the use of the November 2022 GO to be somewhat misapplied. Here, while the misconduct of the subordinate officers was investigated prior to the implementation of the November 2022 GO, Employee's disciplinary investigation and process did not occur until 2023, well after the implementation and effective date of the November 2022 GO. Further, the undersigned would note that the Attachments 14 and 16 in both the November 2006 GO and the November 2022 GO, are identical in that both versions use the same language to describe Neglect of Duty and Failure to Obey Orders and Directives. The GOs are only distinguished by different applications of the Table of Penalties. The 2006 version cites that a first offense of both Neglect of Duty and Failure to Obey directives have a penalty range of "Reprimand to Removal." In the 2022 version, the Table of Penalties is set in Tiers regarding the application. Further, the 2022 version also provides that there can be considerations of penalties that exceed a recommended range if determined by the Chief of Police and that are set forth in the record with "particularity and, such findings shall be made by a preponderance

[50] Employee's Supplemental Exhibit (September 19, 2025).

of evidence."[51] Further, the Tier Range for both Neglect of Duty and Failure to Obey directive range anywhere from an Official Reprimand to Termination.[52]

Here, Employee was initially charged with a 20-Day Suspension and a demotion from Lieutenant to Officer. After review, the Chief of Police rescinded the suspension, but retained the demotion citing to Employee's conduct regarding the oversight of the subordinate officers. I find that Demotion would fall well within the range cited by both the November 2006, and November 2022 General Orders. Further, I find that Agency did not err in utilizing the November 2022 version given that Employee's conduct was not investigated until 2023. Assuming *arguendo* that Agency should have utilized the November 2006 version of the General Order, I find that the penalty range would still include demotion and that the Chief of Police had the discretional authority to issue that penalty based on the aforementioned charges. Thus, this would constitute harmless error.[53] This noted, I find that Agency's use of the November 2022 GO was appropriate in this matter.

Disparate Treatment

OEA has held that, to establish disparate treatment, an employee *must* show that [they] worked in the same organizational unit as the comparison employees (Emphasis added). They *must* also show that both the petitioner and the comparison employees were disciplined by the same supervisor for the same offense within the same general time period (Emphasis added). Further, "in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty." (Emphasis added). An employee must show that there is "enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to determine that the agency treated similarly situated employees differently."[54] If a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue."[55] Accordingly, an employee who makes a claim of disparate treatment has the burden to make a prima facie showing that they were treated differently from other similarly situated employees.

To support this contention, Employee avers that the penalty levied against him is not "consistent with penalties imposed on similarly situated employees."[56] Employee further notes that there is no evidence that other supervisors have been demoted for similar actions. Employee also argues that his past work record along with his long career without discipline are "classic mitigating circumstances." Agency asserts that while the Department's examination of the *Douglas* factors did not identify any specific comparators, DRD 611-20 was provided as a comparable case as part of the

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[51] General Order 120.21 B "Table of Penalties Guide" November 2022.
[52] The 2022 Table of Penalties breaks down misconduct into different tiers and then has a range of penalty for a Mitigated Penalty, Presumptive Penalty and Aggravated Penalty. A Tier 3 Offense of Neglect of Duty and Failure to Obey Directives fall within ranges: Mitigated Penalty (Official Reprimand to 10-Day Suspension); Presumptive Penalty (11-30 Day Suspension); Aggravated Penalty (30 Day Suspension to Termination).
[53] OEA has defined harmless error as "an error in the application of a District agency's procedures, which did not cause substantial harm or prejudice to the employee's rights, or significantly affect the agency's final decision to take the action. OEA Rule §699.1
[54] *Sheri Fox v. Metropolitan Police Department*, OEA Matter No. 1601-0040-17 (January 13, 2020). Citing to *Mills v. D.C. Department of Public Works*, OEA Matter No. 1601-0001-09, *Opinion and Order on Petition for Review* (December 12, 2011), citing *Manning v. Department of Corrections*, OEA Matter No. 1601-0049-04 (January 7, 2005); *Ira Bell v. Department of Human Services*, OEA Matter No. 1601-0020-03, *Opinion and Order on Petition for Review* (May 6, 2009); *Frost v. Office of D.C. Controller*, OEA Matter No. 1601-0098-86R94 (May 18, 1995); and *Hutchinson v. District of Columbia Office of Employee Appeals*, 710 A.2d 227, 236 (D.C. 1998).
[55] *Id.*
[56] Employee's Opposition Brief at Page 5. (June 10, 2025).

record in this matter."[57] Agency cites that in that matter, "a Lieutenant (as Employee was) was charged with Neglect of Duty (as Employee was), proposed for a suspension and demotion to rank of Officer (as Employee was) and ultimately the Chief of Police imposed only a demotion to the rank of Officer as the final penalty (as was the case with Employee)." As such, Agency asserts that "it cannot be reasonably disputed that Employee received the exact same treatment as a similarly situated employee." I find that Employee has not met the burden with regard to a prima facie case to evince disparate treatment in this matter. As such, I find that Agency acted in accordance with all rules and regulations in its administration of discipline in this matter.

Whether the penalty of demotion is appropriate

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).[58] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[59] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[60] Further, I find that with regard to Employee's contentions regarding the *Douglas* Factors, that while he may not agree with Agency's findings as related to those factors, there is no evidence in the record to suggest that Agency did not give due consideration to those factors in assessing the penalty of demotion for Employee in this matter. While Employee's argument that his lack of prior discipline should have been considered as mitigating versus being classified as neutral, I find that in this instance, that is not enough to suggest that Agency failed to appropriately weigh the *Douglas* factors in the administration of this action. The same would be true regarding Employee's argument regarding Agency classification of the potential for rehabilitation as 'neutral' as opposed to mitigating. Considerations were made regarding Employee's length of service, and it was well noted that Employee was not involved with the misconduct of the subordinate officers. I further find that

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[57] *Id.*

[58] *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).

[59] *Love* also provided the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[60] *Id. See also. Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

appropriate considerations of the *Douglas* factors were made regarding the overall discipline, as particularly reflected in the Police Chief's decision to rescind the 20-day suspension that was initially assessed along with the demotion. As a result, I find that Agency relied on what it considered relevant factors outlined in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), in reaching its decision to demote Employee from his position of Lieutenant to Officer.[61] Based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charges were based on substantial evidence and that there was no harmful procedural error. Consequently, the undersigned concludes that the Agency's action should be upheld.

ORDER

It is hereby **ORDERED** that Agency's Motion for Dismissal/Summary Judgement is **GRANTED.** It is further **ORDERED** that Agency's action of demoting Employee from his position of Lieutenant to Officer is **UPHELD**.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, Esq.
Senior Administrative Judge

[61] *Douglas v. Veterans Administration,* 5 M.S.P.R. 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 in the future by the employee or others.