THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,[1]	)	OEA Matter No. 1601-0076-24
	)	
v.	)	Date of Issuance: October 28, 2025
	)	
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF TRANSPORTATION,	)	MONICA DOHNJI, ESQ.
Agency	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Tameka Garner-Barry, Employee Representative
Nana Bailey-Thomas, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 9, 2024, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Transportation's ("DDOT" or "Agency") decision to terminate her from her position as a Traffic Control Officer ("TCO"), effective July 25, 2024. Employee was charged with the following: Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions, pursuant to District Personnel Manual ("DPM") §1605.4(d) and DPM § 1607.2(d)(1). On August 14, 2024, OEA issued a Request for Agency's Answer to Employee's Petition for Appeal. Agency submitted its Answer to Employee's Petition for Appeal on September 13, 2024.

The matter was assigned to Administrative Judge ("AJ") Hochhauser. On October 15, 2024, AJ Hochhauser issued an Order requiring the parties to submit written briefs by November 8, 2024. Agency filed Agency's Response to Judge's Order on November 12, 2024. Following Employee's failure to file her brief as requested, AJ Hochhauser issued an Order on December 12, 2024, requiring Employee to show good cause for her failure to comply with the October 15, 2024, Order by December 30, 2024. Employee timely submitted her brief. AJ Hochhauser issued an Order on January 13, 2024, providing Agency the option to file a response to Employee's December 30, 2024, brief by February 6, 2025.[2] This Order also required Employee to respond to Agency's November 12, 2024, brief by February 27, 2024. Employee filed her response as directed. This matter was reassigned to the undersigned on June 11, 2025, following AJ Hochhauser's departure from OEA.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Agency did not file a response.

After considering the parties' arguments as presented in their submissions to this Office, I have decided that there are no material facts in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

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

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.[3]

ISSUE(S)

1) Whether Agency violated the "90-day rule"[4] in the instant matter.

2) Whether Agency had cause to charge Employee with: "Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions, pursuant to DPM §1605.4(d) and DPM § 1607.2(d)(1)."

3) Whether the penalty of removal is within the range allowed by law, rules, or regulations.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

According to the record, Employee was a TCO with Agency. She was classified as a Safety-Sensitive employee and she acknowledged this designation and the Drug Policy on PeopleSoft.[5] On December 8, 2023, an email from Agency's Risk Management Division (via Agency's 'Erisk' application) was sent to Employee and two (2) other Agency employees[6] notifying them that Employee's application for authorization to drive a government vehicle had been denied, due to invalid license.[7] Thereafter, on December 13, 2023, Natalie JonesBest ("JonesBest"), Agency's Emergency Preparedness and Risk Manager, emailed Employee noting that "[p]lease see the email below regarding your driving status. At this time, you are not able to drive a government vehicle due to your license status."[8] In a statement dated January 19, 2023, Employee's supervisor, Ameka

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[3] OEA Rule § 699.1.
[4] District Personnel Manual ("DPM") § 1602.3(a) and 6-B DCMR § 1602.3(a).
[5] Agency Answer at Exhibit 4.
[6] The two (2) Agency staff copied on the email were (1) Natalie JonesBest, and (2) Clement Smith.
[7] Agency Answer at Exhibit 1 (Ex.A.01.1) (September 13, 2024).
[8] *Id*.

Walker ("Walker") noted that on December 28, 2023, she accompanied Employee to the office to assist her with entering her driver's information into Agency's 'Erisk' system. Walker stated that Employee was informed that her driving privileges had been revoked and she was asked to come into the office on January 10, 2024, to discuss the status of her driver's license. Walker indicated that Employee informed her on December 28, 2023, that she had an issue with a traffic ticket she received in Virginia and she was working to resolve that issue.[9] Employee emailed Agency a copy of her driver's license which was issued in 2016, and valid through March 2024.[10] Employee's driving record retrieved from Fairfax County, Virginia on January 25, 2024, disclosed that Employee was arrested on February, 23, 2023, and convicted for Driving While Intoxicated ("DWI") on July 26, 2023. Agency issued an Advance Written Notice of Proposed Removal ("NOP") to Employee dated May 2, 2024, and mailed it to Employee on May 6, 2024.[11] Employee filed a response to the NOP on May 23, 2024.[12] The Hearing Officer assigned to this matter issued their Report/Recommended Decision on June 11, 2024, upholding Agency's decision to terminate Employee.[13] On July 24, 2024, Agency issued its Notice of Final Decision terminating Employee effective July 25, 2024.[14]

Agency's Position

In its submissions to this Office, Agency asserts that it had cause to terminate Employee for "Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions, pursuant to DPM §1605.4(d) and DPM § 1607.2(d)(1)." Agency states that Employee was notified by the Risk Management Division on December 8, 2023, that her application to drive a government vehicle was denied because her driving privileges had been revoked. Agency asserts that its Emergency Preparedness and Risk Manager, JonesBest, sent a follow up email to Employee notifying her she could not drive a government vehicle due to her driving status. Agency avers that Employee was also notified by her supervisor, Ameka Walker, on December 28, 2023, that her driving privileges had been revoked and that she needed to provide an updated driver's license. Agency cites that Employee provided Agency with a valid driver's license, with no restrictions.[15]

Agency further asserts that as a Safety-Sensitive employee, Employee was required to notify her supervisor and the personnel authority within seven (7) days of her arrest or notice of a criminal complaint against her, but she failed to disclose the arrest and pending charges for DWI to DDOT management for over six (6) months. Agency notes that Employee's failure to disclose her DWI conviction and license suspension indicates negligence by failure to follow DPM policies and Chapter 24 of the Collective Bargaining Agreement ("CBA") between Agency and Employee's Union.[16]

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[9] *Id*. at Exhibit 2 (Ex.A.02.1).
[10] *See* Agency's Response to Judge's Order at Exhibit 1 (November 12, 2024).
[11] Agency Answer, *supra*, at Exhibit 1. Because Employee admitted to sending out the NOP on May 6, 2024, this date will be used as the date of issuance of the NOP and not the May 2, 2024, date on the NOP letter.
[12] *Id*. at Exhibit 2.
[13] *Id*. at Exhibit 3.
[14] *Id*. at Exhibit 3. Agency notes therein that Employee's failure to disclose her Driving While Intoxicated ("DWI") conviction and license suspension indicates negligence by failure to follow the Chapter 24 of the Collective Bargaining Agreement ("CBA") between Agency and Employee's union.
[15] Agency's Response to Judge's Order, *supra*. See also. Agency Answer, *supra*.
[16] *Id*.

Agency cites that its management received notification on December 29, 2023, that Employee was not eligible to drive and Employee was required to provide an update on her license status. Agency also notes that on January 10, 2024, Walker followed up with Employee, requesting an update on Employee's license status. Agency highlights that it was at that point that Employee informed her supervisor that she had received a traffic violation in Virginia. Agency avers that it received a copy of Employee's driving record on January 25, 2024, which showed Employee had a Breath Alcohol Ignition Interlock Device restriction on her license. Agency contends that this restriction showed that Employee had been arrested, charged, and convicted for a serious driving offense that she failed to disclose to Agency as required. Agency contends that the date it knew of the conduct supporting the current removal action is June 25, 2024. Agency argues that January 25, 2024, to May 6, 2024, when it issued the NOP is less than ninety (90) business days, thus, it did not violate DPM § 1602.3. [17]

Employee's Position

Employee asserts that Agency violated DPM § 1602.3 which provides that corrective and adverse action shall commence no more than ninety (90) business days after Agency or personnel authority knew or should have known of the conduct supporting the action. Employee cites that Agency knew or should have known of the conduct supporting the current action on December 8, 2023, when she was informed by Agency's Risk Management Division that her application to drive a government vehicle was denied because Employee's driving privilege was revoked. Employee maintains that she was not aware that her driver's license had been revoked. Employee cites that "[her] license was never revoked and the agency still allowed me to work up until I was presented with termination documentation." [18]

Employee argues that 90 business days from December 8, 2023, is April 17, 2024. Employee notes that because Agency issued the NOP on May 2, 2024, Agency violated the 90-day rule pursuant to DPM § 1602.3. Employee explains that after the December 8, 2023, notification, Agency "continued to investigate and discuss this matter with me in subsequent emails dated December 13, 2023, and December 28, 2023, demonstrating an ongoing awareness of the issue well before January 25, 2024." Employee asserts that her termination was untimely, invalid and that this Office should find that Agency violated the 90-day rule and reinstate her with back pay and benefits. [19]

Analysis [20]

1) <u>Whether Agency violated the 90-Day Rule</u>

At issue here is whether Agency, in administering the instant adverse action, adhered to applicable provisions of law, specifically 6-B DCMR § 1602.3(a).[21] 6-B DCMR §1602.3(a) provides

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[17] *Id*.
[18] Petition for Appeal (August 9, 2024). *See also* Employee's Response to Agency's Argument on 90-day Rule Violation (February 27, 2025).
[19] *Id*.
[20] 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").
[21] 6-B DCMR 1602.3 and DPM 1602.3 will be used interchangeably throughout this decision.

that a "corrective or adverse action shall be commenced no more than ninety (90) business days after the agency or personnel authority knew or should have known of the performance or conduct supporting the action." The OEA Board has held that the legislative intent of the 90-Day Rule provision found in DPM §1602.3(a) is to "establish a disciplinary system that included inter alia, that agencies provide prior written notice of the grounds on which the action is proposed to be taken."[22] The Board noted that prior to this revision, the "courts have ruled on matters pertaining to the ninety-day rule as it related to D.C. Code § 5-1031...[t]his statutory language is only applicable to those employed by the Metropolitan Police Department or the D.C. Fire and Emergency Medical Service agencies."[23] That noted, the Board further held that while the intent for the 1602.3 (a) provision was not "spelled out in the DPM, it is reasonable to believe that the intent was similar to that provided by the D.C. Council when establishing the language of the ninety-day rule." The Board referenced a D.C. Court of Appeals decision[24] wherein the Court found that "the deadline was intended to bring certainty to employees of an adverse action that may otherwise linger indefinitely."[25] The Board has also held that this provision of the DPM 1602.3(a) like its counterpart found in D.C. Code §5-1031, are mandatory in nature.[26]

Here, Agency provided two (2) specifications in support of this action. First, Agency notes that Employee was terminated because her driving privileges were revoked and she failed to disclose this information to Agency. Employee avers that Agency violated the 90-Day rule in the administration of this action. Specifically, Employee maintains that Agency knew or should have known her driving privileges were revoked on December 8, 2023, when Agency's Risk Management Division notified her via email that her application to drive a government vehicle was denied because her driving privilege was revoked. Agency on the other hand argues that it did not know of the alleged misconduct until January 25, 2024, when it received a copy of Employee's driving record.

I find that Agency knew Employee's driving privileges had been revoked on December 8, 2023, when an email from Agency's Risk Management Division was sent to Employee and *two (2) other members of Agency staff* notifying them that Employee's application for authorization to drive a government vehicle had been denied, *due to invalid license*. (Emphasis added). Furthermore, on December 13, 2023, JonesBest, Agency's Emergency Preparedness and Risk Manager, emailed Employee noting that "Please see the email below regarding your driving status. At this time, you are not able to drive a government vehicle due to your license status." Therefore, I find that Agency violated the 90-day rule with regard to Employee's revoked driving privileges because Agency knew on December 8, 2023, via the 'Erisk' email correspondence that Employee's driving privileges had been revoked. December 8, 2023, to May 6, 2024, is 102 business days, which is more than the required 90 business days to commence adverse action.

Additionally, Agency relied on Employee's failure to timely disclose her arrest and criminal conviction to support the current action. Agency asserts that it learned of Employee's arrest and

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[22] *Keith Bickford v Department of General Service*, OEA Matter No.1601-0053-17, Opinion and Order on Petition for Review (January 14, 2020).
[23] *Id*.
[24] *Id*. citing to *District of Columbia Fire and Medical Services Department v D.C. Office of Employee Appeals*, 986 A.2d 419,425 (2010).
[25] *Id*. The Board also cited the Court of Appeals as noting that the "D.C. Council, in establishing the ninety-day rule, was motivated by the exorbitant amount of time that the [adverse action] process was taking, such that...employees had to wait months or even years to see the conclusion of an investigation against them."
[26] *Id*. at pgs. 9-10.

conviction after it obtained her driving record from Virginia on January 25, 2024. I find that while Agency was aware that Employee's driving privileges had been revoked, prior to obtaining Employee's driving record on January 25, 2024, Agency was not aware Employee's revoked driving privileges was connected to an arrest and conviction which Employee failed to disclose to Agency.

Pursuant to 6-B DCMR §1602.3(a), the standard for when the 90-day time limit begins is not when an agency is able to verify misconduct, but when the agency "knew or should have known" of the misconduct.[27] The District of Columbia Superior Court in *Widmon Butler v. Metropolitan Police Department et al.*,[28] cited to a quoted language from *Medical Services Department v. D.C. Office of Employee Appeals*[29] that "[t]he history of the ninety-day rule counsels against [the] view that only knowledge with a high degree of certainty starts the statute's clock." Based on this reasoning, I find that although Agency knew on December 8, 2023, after it received the 'Erisk' notification that Employee's driving privileges had been revoked, Agency only knew of Employee's arrest and conviction for DWI on January 25, 2024. Therefore, Agency had 90 business days from when it knew of Employee's arrest, DWI charge and conviction, to thoroughly investigate, verify and commence the instant adverse action. According to the record, Agency issued the Notice of Proposed Removal to Employee on May 6, 2023, this is 71 business days from January 25, 2024, when Agency received Employee's driving record from Virginia noting that Employee was arrested on February 23, 2023, charged and convicted for DWI on July 26, 2023. Therefore, I conclude that Agency did not violate the 90-day rule with regard to Employee's failure to report her arrest to Agency. As such, the undersigned must address whether Agency had cause to charge Employee pursuant to DPM §1605.4(d) and DPM § 1607.2(d)(1), based on her failure to disclose her arrest and conviction.

2) **Whether Agency had cause to charge Employee with: Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions, pursuant to DPM §1605.4(d) and DPM § 1607.2(d)(1)**

Agency asserts that as a Safety-Sensitive employee, Employee was required to notify her supervisor and the personnel authority within seven (7) days of her arrest or notice of a criminal complaint against her, but she failed to disclose the arrest and pending charges for DWI to DDOT management for over six (6) months. Employee does not dispute Agency's assertion that she was arrested, charged with DWI, convicted and failed to disclose this information to Agency for over six (6) months. Moreover, the record highlights that Employee was a Safety-Sensitive employee and she was required, pursuant to the DPM § 416.4 to report any arrest to Agency within seven (7) days. Agency learned of Employee's arrest on January 25, 2024.[30] Based on the record, Employee was arrested and charged with DWI on February 23, 2023, in Virginia. She was later convicted of this charge on July 26, 2023. However, Employee did not notify Agency of this arrest within seven (7) days, in compliance with DPM § 416.4. Agency only found out about the arrest after it received Employee's driving record from Fairfax County, Virginia on January 25, 2024. Accordingly, I find that Employee's failure to timely disclose her arrest, DWI charge and conviction constitutes a failure

[27] *Employee v. D.C. Department of General Services*, OEA Matter No. 1601-0005-21(June 24, 2022).
[28] Case No. 2017 CA 007843 P(MPA)(October 15, 2018).
[29] 986 A.2d 419, 425 (D.C. 2010).
[30] DPM § 416.4 provides that: "Volunteers or *employees in a covered position shall notify their supervisor and the personnel authority whenever they are arrested or charged with any criminal offense*. Such notification *shall* occur within *no more than seven (7) days of the arrest or service of a criminal complaint*, or its equivalent, on the volunteer or employee. *Failure to comply with this subsection shall constitute cause for disciplinary action under Chapter 16 of these regulations*." (Emphasis added).

to comply with rules and regulations. I further find that Employee's failure to timely report her arrest and subsequent conviction to Agency constitutes negligence, as described in DPM §1605.4(d) and DPM § 1607.2(d)(1).

3) <u>Whether the penalty of removal is within the range allowed by law, rules, or regulations.</u>

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).[31] 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 Illustrative Actions; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. In the instant case, I find that Agency has met its burden of proof for: "Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions, pursuant to DPM §1605.4(d) and DPM § 1607.2(d)(1)." Thus, Agency can discipline Employee based on this charge.

In reviewing Agency's decision to remove Employee from her position, OEA may look to the Table of Illustrative Actions ("TIA"). Pursuant to the record, this is Employee's first charge for "Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions." Agency terminated Employee pursuant to this cause of action. The penalty for the first offense for "Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions" ranges from Counseling to removal. Thus, I find that Agency's penalty of removal for this cause of action is within the range allowed by the TIA.

As provided in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office.[32] When an Agency's charge is upheld, this Office has held that it will leave the 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 judgment.

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[31] *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).

[32] *Love* also provided that "[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, is it 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 (1981).

Penalty Based on Consideration of Relevant Factors

An Agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.[33] Agency presented evidence that it considered relevant factors as outlined in *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981), in reaching the decision to terminate Employee.[34] The *Douglas* factor analysis included in the record demonstrates that Agency considered all factors in imposing the penalty in this matter. As noted above, the evidence does not establish that the penalty of removal constituted an abuse of discretion. Accordingly, I further conclude that Agency's action should be upheld.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of terminating Employee is **UPHELD.**

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge

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[33] *Butler v. Department of Motor Vehicles,* OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C. Reg. 352 (1985).

[34] 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.