THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE[1]	
v.	OEA Matter No.: 1601-0005-25
D.C. FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT, Agency	Date of Issuance: December 18, 2025

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Firefighter/Emergency Medical Technician with the D.C. Fire & Emergency Medical Services Department ("Agency"). On December 13, 2023, Employee was issued a Notice of Proposed Adverse Action charging him with conduct unbecoming an employee,[2] insubordination,[3] and neglect of duty/failed patient care.[4] According to Agency, on

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

[2] All three charges a gainst Employee were generated as a result of Case No. U-23-776. The conduct in Charge No. 1 was further described in Agency's charging documents as a violation of Order Book Article VII, Section 2(f)(3), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty." *See also* DPM § 1603.3(f)(3) (rev. 08/27/2012); *see also* and DPM § 1605.4(e) (rev. 06/12/2019).

[3] The conduct in Charge No. 2 was further described in Agency's charging documents as a violation of Order Book Article VII, Section 2(f)(4), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Insubordination ."

[4] The conduct in Charge No. 3 was further described in Agency's charging documents as violations of Order Book Article XX.IV, Bulletin No. 3 (Patient Bill of Rights), and Order Book Article VII, § 2(f)(3), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty. Agency amended Charge No. 3 during the Trial Board hearing by removing the violations

August 11, 2023, Employee was dispatched to a call for emergency services, but upon arrival, remained in his ambulancefor ten minutes consumingfood and perusing his phone. Agency further alleged that Employee left the scene of the emergency without authorization and later became argumentative with a supervisor after being ordered to return to the location to transport the patient. Employee pleaded not guilty during an August 5, 2024, Trial Board hearing. On September 10, 2024, the Trial Board found Employee guilty of each charge and recommended termination. The Fire Chief accepted the Trial Board's recommendation on September 10, 2024, and Employee's termination became effective on September 21, 2024.[5]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 15, 2024. He argued that the Trial Board failed to honor his objections during the hearing and improperly admitted evidence. Employee also contended that the Trial Board chair exhibited bias by outlining charges that were not included in Agency's advance notice. As a result, he requested to be reinstated with back pay and benefits.[6]

In response, Agency asserted that the charges were supported by witness testimony, video footage, and special reports. It posited that Employee's termination was taken in accordance with all applicable laws and regulations and maintained that no harmful procedural error was committed during the disciplinary proceedings. Finally, Agency submitted that the relevant *Douglas* factors[7]

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of Order Book Article VII, § 2(f)(9).Thus, the only remaining specification for this charge was neglect of duty based on failed patient care.

[5] *Agency's Answer to Petition for Appeal* (October 31, 2024).

[6] *Petition for Appeal* (October 15, 2024).

[7] *See 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 employeesfor the same or similar offenses; 7) consistency of the penalty with any applicable agency table of penalties;

were weighed in favor of termination. Therefore, it opined that Employee's termination was based on substantial evidence.[8]

An OEA Administrative Judge ("AJ") was assigned to the matter in November of 2024. During a December 20, 2024, prehearing conference, the AJ determined that the holding in *Pinkard v. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2006),[9] precluded a *de novo* evidentiary hearing. Accordingly, the parties were ordered to submit briefs addressing whether the Trial Board's decision was supported by substantial evidence; whether Agency committed a harmful procedural error; and whether Employee's termination was taken in accordance with all laws and regulations.[10]

In its brief, Agency argued that radio recordings, video, and related documentation demonstrated that on August 11, 2023, Ambulance 29 announced its arrival at the Psychiatric Institute of Washington. However, Employee and his partner failed to exit the vehicle to assess or aid the patient. According to Agency, Employee was instead observed eating food and looking at his phone for approximately ten minutes before placing Ambulance 29 back in service and departing the scene. It explained that Employee was also insubordinate, argumentative, and unprofessional to a superior, Captain Joseph Kelly, after he was ordered to return to the scene.

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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.

[8] *Agency's Answer* at p. 11.

[9] Under the holding in *Pinkard*, this Office may not conduct a *de novo* hearing in an appeal before him/her, but it must rather base his/her decision solely on the record below, when all of the following conditions are met: the appellant is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department; the employee has been subjected to an adverse action; the employee is a member of a bargaining unit covered by a collective bargaining agreement; the collective bargaining agreement contains language essentially the same as that foundin *Pinkard*; and at the agency level, the employee appeared before a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee.

[10] *Post-Conference Order* (December 20, 2024).

Agency further asserted that Employee violated protocol related to patient care when he failed to enter the emergency scene to render aid to the patient. Thus, it opined that all three charges were based on substantial evidence. Agency maintained that no harmful procedural errors were committed during Employee's disciplinary proceedings and reasonedthat removal was appropriate based on an assessment of the *Douglas* factors. Therefore, it requested that Employee's removal be sustained.[11]

In response, Employee contended that the record did not support a charge of conduct unbecoming because there was no impact on Agency's ability to provide care to the patient and because other personnel were present on the scene who were better equipped to respond to the call for service. As it related to insubordination, Employee stated that he responded reasonably to a public confrontation initiated by his supervisor, Captain Kelly, regarding Ambulance 29's departure from the scene. Consequently, Employee submitted that the penalty was unreasonable under the circumstances.[12]

The AJ issued an Initial Decision on July 18, 2025. First, he held that Employee's conduct on August 11, 2023, amounted to neglect of duty, insubordination, and conduct becoming. The AJ explained that Employee did not deny that he failed to exit Ambulance 29 after arriving at the call for service. He found Employee's excuses for his conduct to be insufficient to overcome Agency's presentation of evidence. Thus, the AJ ruled that there was substantial evidence in the record to support each charge levied against Employee. With respect to harmful procedural error, the AJ disagreed with Employee's argument that his partner was similarly situated because they were not within the same organizational unit; did not work under the same supervisor; and did not incur the

[11] *Agency's Brief* (January 31, 2025).
[12] *Employee's Brief* (February 26, 2025). Agency filed a reply brief on March 10, 2025. It reiterated that each charge levied against Employee was based on substantial evidence and opined that termination was the appropriate penalty for his misconduct. Thus, it maintained that the Trial Board's decision was supported by the record.

same charges for the underlying conduct. As a result, he opined that the *Douglas* factors, particularly Employee's prior disciplinary history, weighed in favor of termination. Consequently, Agency's termination action was upheld.[13]

Employee filed a Petition for Review with the OEA Board on August 21, 2025. He argues that the Initial Decision is not based on substantial evidence because the AJ failed to properly weigh his claim of disparate treatment. According to Employee, his partner held the same role, was his direct supervisor, and was assigned to the same unit as him. However, Employee differentiates that his partner only received a thirty-six hour suspension whereas he was terminated. As such, he submits that Agency misapplied *Douglas* factor No. 6, consistency of the penalty with those imposed upon other employees for the same or similar offenses. Thus, Employee requests that the Board reverse his termination.[14]

In response, Agency asserts that the AJ properly rejected Employee's claim of disparate treatment. In support thereof, it notes that Employee and his partner did not commit the same misconduct and did not have the same disciplinary history. Therefore, Agency reasons that different disciplinary charges were warranted under the circumstances. Lastly, it reiterates that termination was within the range of penalties allowed by law. Consequently, Agency asks that the Board deny Employee's Petition for Review.[15]

Substantial Evidence

Under 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

[13] *Initial Decision* (July 18, 2025).
[14] *Petition for Review* (August 21, 2025).
[15] *Agency's Answer to Petition for Review* (September 17, 2025).

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.[16]

Disparate Treatment

Employee argues that the AJ erred in finding that he failed to make a *prima facie* claim of disparate treatment. OEA has historically held that if an employee is singled out for punishment, or is punished in a disproportionate manner as compared to other similarly situated employees, the punishment may be reviewed for consistency and may be reduced or reversed altogether.[17] An employee raising the issue of disparate treatment has the burden of demonstrating that they were treated differently from other similarly situated employees.[18] To establish disparate treatment, the

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[16] 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).

[17] *Employee v. Agency*, OEA Matter No. 1601-0180-81, 31 D.C. Reg. 2186 (1984); *Harris v. Department of Human Services*, OEA Matter No. 1601-0188-91 (May 19, 1993); *Alvin Frost v. Office of the D.C. Controller*, OEA Matter No. 1601-0098-86R94 (May 18, 1995); and *Sheena Washington v. Officeof State Superintendent of Education*, OEA Matter No. 1601-0129-11R16, *Opinion and Order on Petition for Review* (July 11, 2017).

[18] In *Hutchinson v. D.C. Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 22, 1994), the OEA Board provided the following as it relates to disparate treatment:

> A number of factors are important in determining whether a penalty is reasonable. Among these factors is whether or not the agency has meted out similar penalties for similar offenses. However, the principle of similar penalties for similar offenses does not require that agencies insist upon rigid formalism, mathematical rigidity, or perfect consistency regardless of variations, but that they apply practical realism to each situation to assure that employees receive fair and equitable treatment where genuinely similar cases are presented Employee bears the burden of showing that the circumstances surrounding the misconduct are substantially similar to the circumstances in the cases being compared. . . . Normally, in order to establish disparate treatment, the employee must show that they worked in the same organizational unit as the comparison employees, and they were subject to discipline by the same supervisor within the same general period

Citing *Douglas v. Veterans Administration*, 5 M.S.P.R 280 (306-307)(1981); *Bess v. Department of the Navy*, 46 M.S.P.R. 583 (1991); *Carroll v. Department of Health and Human Services*, 703 F.2d 1388 (Fed. Cir. 1983); *Kuhlmann v. Departmentof Health and Human Services*, 10 M.S.P.R 356 (1982); Mille v. Department of Air Force, 28 M.S.P.R 248 (1985). *Also see Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Adewetan v. D.C. General Hospital*, OEA Matter No. 1601-0021-93 (July 11, 1995); *Link v. Departmentof Corrections*, OEA Matter No. 1601-0079-92, *Opinion and Order on Petition for Review* (September 29, 1995); *Jordan v. Metropolitan Police Department*, OEA Matter No. 16010285-

employee must show that they worked in the same organizational unit as the comparison employee(s), were subject to discipline by the same supervisor, andwithin the same general period. If such a showing is made, 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.[19]

In support of his petition, Employee's states that his partner not only held the same position as him but was also his direct supervisor. However, his assertion is contrary to a finding of similarly situated employees. On August 11, 2023, Employee's partner was assigned as the Ambulance Crew Member in Charge ("ACIC") and was "generally responsible for [the] ambulance's decision-making."[20] Thus, while there is no evidence to show that his partner was Employee's direct supervisor, it is reasonable to conclude that the ACIC held tacit authority over him during the relevant time period. As a result of the August 11, 2023, incident, Employee's partner received a thirty-six hour suspension after she was charged with neglect of duty for departing the scene and neglect of duty in patient care.[21] In contrast, Employee was charged with neglect of duty, insubordination, and unreasonable failure to give assistance. We note that Employee had the opportunity to present to the Trial Board evidence that he and his partner were subject to discipline by the same supervisor and within the same organizational unit but did not.

Even if Employee could prove that he and his partner were similarly situated, Agency has established a legitimate reason for imposing a more severe penalty. Employee's partner had no disciplinary history in the three years prior to the incident.[22] Conversely, Employee's disciplinary

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94, *Opinion and Order on Petition for Review* (September 29, 1995); *Shade v. Department of Administrative Services*, OEA Matter No. 1601-0360-94 (August 3, 1999); *Reynold Morris v. Office of State Superintendent of Education*, OEA Matter No. 1601-0261-10 (September 4, 2013); *Shalonda Smith v. D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0195-11 (November 27, 2013); *and Shelby Ford v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0066-13 (January 12, 2016).

[19] *Id.*

[20] *Trial Board Hearing Transcript* at p. 281.

[21] *Id.* at pp. 233-236.

[22] *Trial Board Hearing Transcript* at p. 236.

record reflects four sustained charges of absence without official leave, violation of safety protocols, failure to provide patient care, and insubordination.[23] Accordingly, we are in agreement with the AJ's assessment as to why Employee failed to satisfy his burden of proof concerning disparate treatment. Consequently, his argument on Petition for Review is unpersuasive.

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).[24] According to the Court in *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency. The D.C. Court of Appeals in *Stokes* reasoned that when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but it should ensure that "managerial discretion has been legitimately invoked and properly exercised." Moreover, in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), OEA 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

[23] *Agency Answer to Petition for Appeal*, Tab 18.
[24] *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 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).

> 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, 5 M.S.P.R. 280 (1981)).

Agency's final decision outlined that it considered each of the twelve *Douglas* factors. Thus, all pertinent factors were considered when selecting its penalty. Employee's disagreements with its assessment of the penalty are insufficient to overcome the weight of evidence in support of termination. Accordingly, this Board finds no basis for reversing the AJ's conclusion as it relates to the selected penalty because it is based on substantial evidence.

Conclusion

Based on the foregoing, the Board concludes that the AJ's findings are supported by the record. Employee has failed to meet his burden of proof regarding disparate treatment. Termination was within the range of penalty for the charges levied, and Agency considered all relevant factors before imposing the penalty. Accordingly, Employee's Petition for Review must be denied.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED.**

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.