

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

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No.: 1601-0036-23R26
v.	)	
	)	Date: September 24, 2026
METROPOLITAN	)	
POLICE DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

This matter was previously before the Board. Employee worked as a Legal Instruments Examiner with the Metropolitan Police Department (“Agency”). On November 15, 2022, Agency issued Employee a Fifteen-Day Advance Written Notice of Proposed Removal. The notice charged Employee with two counts of conduct prejudicial to the District government and one count of unethical or improper use of official authority or credentials pursuant to Chapter 6-B, Sections 1607.2(a)(3), 1605.5(a),² 1607.2(a)(5), and 1607.2(a)(9) of the D.C. Municipal Regulations (“DCMR”). The charges stemmed from Employee’s July 17, 2022, arrest on four counts of carrying a pistol without a license; possession of a large capacity

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

² Agency’s advance notice relied on both DCMR § 1607.2(a)(3) and § 1605.5(a) as violations to support Charge No. 1.

ammunition feeding device; possession of an unregistered firearm; and unlawful possession of ammunition.³ The effective date of her termination was March 6, 2023.⁴

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on March 21, 2023, asserting that her termination was wrongful.⁵ Agency’s March 29, 2023, answer contended that Employee’s removal was appropriate in light of the *Douglas*⁶ factors.⁷ On May 21, 2023, the OEA Administrative Judge (“AJ”) ordered the parties to submit briefs in support of their positions.⁸

The AJ issued an Initial Decision on September 5, 2025. She held that Agency established cause to discipline Employee for prejudicial conduct as outlined in Charges Nos. 1 and 2. However, the AJ reversed Charge No. 3⁹ because Agency failed to establish that Employee engaged in unethical or improper use of official authority or credentials during her arrest. As for the penalty, she concluded that a first violation of 6-B DCMR § 1607.2(a)(3) (Charge No. 1) was limited to placement enforced leave pending criminal prosecution. She provided that the maximum penalty for a first violation of 6-B DCMR § 1607.2(a)(5) (Charge No. 2) was a thirty-day suspension. Because termination exceeded what was permissible under the Table of Illustrative Actions (“TIA”), the AJ reversed Employee’s termination;

³ All charges for Employee’s criminal matter were dismissed by the United States Attorney’s Office on January 27, 2025.

⁴ *Agency’s Answer to Petition for Appeal* (March 29, 2023).

⁵ *Petition for Appeal* (March 21, 2023).

⁶ 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 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.

⁷ *Agency’s Answer*, pp. 3-4.

⁸ *Second Post-Status/Prehearing Conference Order* (May 21, 2025).

⁹ The imposed penalty for Charge No. 3 was removal.

modified Charge No. 1 to place Employee on enforced leave from March 6, 2023, to January 27, 2025; and imposed a thirty-day suspension for Charge No. 2.¹⁰

Agency's October 7, 2025, Petition for Review contended that the AJ erred by failing to address its argument that Employee violated 6-B DCMR § 1605.5(a) as it related to Charge No. 1. It averred that the AJ misquoted the language of the charge in her decision and also failed to determine whether termination could be sustained under § 1605.5(a). Lastly, Agency claimed that the AJ erred by reversing Charge No. 3.¹¹

The OEA Board issued an Opinion and Order on Petition for Review on January 29, 2026. It held that because the AJ failed to address 6-B DCMR § 1605.5(a) as provided in Charge No. 1, it could not determine if the Initial Decision was based on substantial evidence. As a result, the matter was remanded to the AJ for additional briefing.¹² On February 4, 2026, the AJ issued an order directing the parties to address whether Agency established cause to charge Employee with a violation of § 1605.5(a) and to determine the appropriate penalty.¹³

In its brief, Agency argued that Charge No. 1 was taken for cause pursuant to 6-B DCMR § 1605.5(a) because it was undisputed that Employee was arrested, charged, and indicted for criminal offenses. As it related to the penalty, Agency suggested that absent an explicit penalty in the Table of Illustrative Actions for § 1605.5(a), the AJ should be guided by General Order ("GO") 120.21. It reasoned that termination was the presumptive penalty for engaging in conduct that constitutes a crime under the Table of Penalties provided in the GO. As a result, Agency opined that removal, and not placement on enforced leave, was the appropriate penalty for Charge No. 1. Consequently, it requested that Employee's removal be sustained.¹⁴

¹⁰ *Initial Decision* (September 5, 2025).

¹¹ *Petition for Review* (October 7, 2025).

¹² *Opinion and Order on Petition for Review* (January 29, 2026).

¹³ *Order* (February 4, 2026).

¹⁴ *Agency's Brief* (February 26, 2025).

In response, Employee asserted that she never intended to violate the law and highlighted that all criminal charges against her were dismissed by the U.S. Attorney's Office. She further submitted that the imposed discipline exceeded what was legally permitted; Agency was required to consider mitigating factors, including her lack of disciplinary history; and OEA has upheld the imposition of suspensions rather than termination in cases similar to hers. Therefore, Employee maintained that removal exceeded the bounds of reasonableness.¹⁵

The AJ issued an Initial Decision on Remand on May 29, 2026. She held that Agency established cause to discipline Employee pursuant to 6-B DCMR § 1605.5(a) under Charge No. 1 because Employee was arrested and charged with conduct constituting criminal offenses, noting that the charge did not require a criminal conviction. However, the AJ rejected Agency's reliance on GO 120.21 to justify termination because Employee was not a sworn member of the Metropolitan Police Department and because the GO did not provide a penalty for conduct that constitutes a crime absent a conviction. Instead, the AJ treated the language of § 1605.5(a) as analogous to that of § 1607.2(a)(3).¹⁶ She provided that under this section, the prescribed penalty for a first offense of indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission was enforced leave pending criminal prosecution. Because Agency terminated Employee while her criminal case remained pending, the AJ concluded that termination exceeded the maximum allowable penalty for Charge No. 1, notwithstanding Agency's consideration of the *Douglas* factors. Thus, consistent with the September 5, 2025, Initial Decision, the AJ reversed Employee's termination for Charge No. 3; modified Charge No.

¹⁵ *Employee's Brief* (March 6, 2026). Agency filed a reply brief on April 1, 2026, wherein it contended that none of the OEA matters highlighted by Employee were analogous to the facts presented in this case. Thus, it maintained that termination was the appropriate penalty under § 1605.5(a). *Agency's Reply* (April 1, 2026).

¹⁶ As previously stated, Agency's Charge No. 1 included both § 1607.2(a)(3) and § 1605.5(a) as violations to support Employee's misconduct.

1 to place Employee on enforced leave from March 6, 2023, to January 27, 2025; and imposed a thirty-day suspension for Charge No. 2.¹⁷

Agency filed a second Petition for Review with the OEA Board on July 6, 2026. It asserts that the AJ erroneously found that termination was not a permissible penalty for engaging in conduct that constitutes a crime under GO 120.21. According to Agency, the GO's Table of Penalties places Employee's conduct in the "Termination Offenses" tier. Therefore, it reasons that removal was authorized for Charge No. 1. It further opines that after considering the *Douglas* factors, the AJ was required to defer to management's reasonable selection of that penalty rather than substituting her own judgment. Lastly, Agency submits that the AJ relied on inapplicable case law in support of her conclusion. As a result, it requests that the Initial Decision on Remand be reversed.¹⁸

Discussion

This Board instructed the AJ to make additional findings on remand because the Initial Decision failed to address whether Employee was disciplined for cause pursuant to DCMR § 1605.5(a) under Charge No. 1 and whether termination was permitted for the offense. The November 15, 2022, Advance Notice of Proposed Action provided the following in pertinent part:

DC Personnel Regulation, Chapter 16, Section 1607.2(a)(3)

Charge No. 1: Conduct Prejudicial to the District Government - (3)
Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission.

Your conduct is also described under D.C. Personnel Regulations, Chapter 16, Section 1605.5(a), An employee of the Department of Correction, Department of Youth Rehabilitation Services, or Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:

¹⁷ Initial Decision on Remand (May 29, 2026).

¹⁸ Petition for Review (July 6, 2026).

(a) The employee engages in any act or omission that constitutes a criminal offense. (*emphasis added*).

We agree with the AJ's conclusion that a violation of § 1605.5(a) does not require a conviction, but may also be sustained based on Employee's arrest, indictment, and felony charges, all of which constitute criminal offenses. Therefore, Agency established cause to discipline Employee with violating 6-B DCMR §§ 1607.2(a)(3) and 1605.5(a) pursuant to Charge No 1.¹⁹

This Board further concurs with the AJ's conclusion that Agency's General Orders do not apply to Employee. Prior to her removal, Employee worked as a civilian Legal Instruments Examiner, and she was removed pursuant to Chapter 16 of the D.C. Personnel Regulations. In accordance with 6-B DCMR § 1600.2(g), "the provisions of this chapter apply to all District government employees except the following: ...(g) Sworn members of the Metropolitan Police Department." While Agency suggests that this Office should be guided by GO 120.21 in reviewing its penalty for Charge No. 1, Employee occupied a civilian position and was not a sworn member of the Department. Further, Agency fails to provide any persuasive regulatory, statutory, or other legal authority for applying GO 120.21 to Employee's conduct. Therefore, this Board rejects Agency's reliance on such, and Employee's conduct must be reviewed under Chapter 16 of the regulations.

Accordingly, we must assess whether the AJ erred in determining the appropriate penalty for Charge No. 1. DCMR § 1605.5(a) does not prescribe an independent penalty under the TIA and was incorporated into, rather than separately charged from § 1607.2(a)(3). Therefore, the applicable TIA provision for determining the penalty remains § 1607.2(a)(3) – "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission."

¹⁹ The D.C. Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it 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.

Under the TIA, a first violation of § 1607.2(a)(3) identifies enforced leave pending criminal prosecution, not removal, as the prescribed penalty. Thus, termination cannot be characterized as falling within the applicable TIA penalty range. To sustain removal based on a violation of § 1605.5(a) under Charge No. 1, Agency would have to establish that the regulations permitted an upward deviation from the identified penalty and that removal constituted a reasonable exercise of managerial discretion under the applicable factors. A review of the record indicates that an upward deviation is not permitted. Moreover, Agency's March 6, 2023, Notice of Final Decision provides that the penalty for a first violation of § 1607.2(a)(3) is enforced leave pending criminal prosecution.²⁰ Here, Employee was terminated effective March 6, 2023, and the related criminal charges were not dismissed until January 27, 2025, nearly two years after the removal action. Consequently, this Board agrees with the AJ's ruling that termination was not within the range of penalties for Charge No. 1 because removal exceeded what is permitted by law. As a result, her findings are supported by substantial evidence.

As for Charge No. 2, the record establishes that Employee engaged in prejudicial conduct in violation of 6-B DCMR § 1607.2(a)(5). This Board agrees that Employee's July 17, 2022, off duty conduct adversely affected her job performance and trustworthiness; adversely affected Agency's mission; and had an identifiable nexus to Employee's position. 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).²¹ According to the Court in *Stokes*, OEA must decide whether the penalty was within the range

²⁰ Notice of Final Decision, *Agency Answer to Petition for Appeal*, Tab 5.

²¹ *Anthony Payne v. D.C. Metropolitan*, OEA Matter No. 1601-00540-01, *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).

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. A first violation of §1607.2(a)(5) under the TIA imposes a penalty of counseling to a thirty-day suspension.

The AJ found that a thirty-day suspension fell within the range of allowable penalties. Agency's Notice of Final Decision also provided that maximum penalty for a charge of prejudicial conduct under § 1607.2(a)(5) is a thirty-day suspension. Consequently, Charge No. 2 was taken for cause, and the imposition of a thirty-day suspension was permitted under the regulations. Accordingly, the AJ's finding on this issue is based on substantial evidence.

Finally, the AJ's findings related to Charge No. 3 are supported by the record. The AJ held that Employee did not violate 6-B DCMR § 1607.2(a)(9), which prohibits the unethical or improper use of official authority or credentials. In both *Employee v. Department of General Services*, OEA Matter No. 1601-0005-21 (June 24, 2022) and *Employee v. D.C. Child and Family Services*, OEA Matter No. 1601-0007-25 (November 3, 2025), this Office sustained charges of unethical use of official authority or credentials under § 1607.2(a)(9) after the agencies established that the employees utilized official government credentials to improperly gain access to a location or exercised their authority in an impermissible manner. This Board has reviewed the Body Worn Camera footage of Employee's arrest, and the record is devoid of any credible evidence demonstrating that her conduct arose to a violation of § 1607.2(a)(9).

Employee, a civilian Legal Instrument Examiner, possessed no law enforcement authority. During the July 17, 2022, traffic stop, Employee initially stated that she was going to call her captain, then requested to call her captain, but remained silent when asked by the responding Detective if she was security, law enforcement, fire department, or military, and why she had a captain.²² Employee never

²² Body Worn Camera Footage, Agency Exhibits 7 and 8.

presented law enforcement credentials;²³ expressed that she requested to call her captain because she was in fear; and informed the officers that she was a civilian employee.²⁴ There is no evidence in the record to establish an improper or unethical use of official authority or credentials other than Agency's postulations concerning Employee's apparent belief that she would obtain a benefit by invoking her status as an employee of the Department. Because Employee did not proactively present credentials to the officers; did not claim to hold a position of authority; and did not attempt to influence the officers' conduct for personal benefit, Agency's charge must fail. Employee's statements regarding contacting a captain are not substantial evidence of misuse of authority. Therefore, Section 1607.2(a)(9) cannot apply to the conduct at issue. As such, the AJ's reversal of Charge No. 3 is supported by substantial evidence. Accordingly, this Board must uphold the Initial Decision on Remand and deny Agency's Petition for Review.

²³ During the stop, Employee's civilian identification was found in her wallet by the responding officer. Employee did not offer her Agency-issued ID to the officer.

²⁴ The BWC demonstrates that the officers retrieved Employee's identification which identified her as a civilian Metropolitan Police Department employee. The officer subsequently asked Employee who her captain was, to which she responded, "I don't have a captain."

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**. Employee's termination is, therefore, **REVERSED**. The penalty for Charge No. 1 is enforced leave from March 6, 2023, to January 27, 2025, and the penalty for Charge No. 2 is a thirty-day suspension.

FOR THE BOARD:

Pia Winston, Chair

LaShon Adams

Jeanne Moorehead

Lafayette Barnes

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.