

**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

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

had the option to submit a sur-reply brief by or before April 24, 2026. Both parties submitted all briefs in accordance with the prescribed deadlines. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether the Fire Trial Board's decision was supported by substantial evidence;
2. Whether there was harmful procedural error;
3. Whether Agency's action was done in accordance with all applicable laws or regulations.

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.²

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.

STATEMENT OF THE CHARGES

In a Final Agency Decision: Termination Notice dated August 27, 2025, Employee was charged with the following:

In Case Numbers U-25-016, U-25-038, and U-25-063, The Trial Board recommended termination for all charges brought against you. In case U-25-016 you failed to report for duty at the proper place and time on October 13, 2024. This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII §2.2 (f)(1) (Attendance-related offenses, including: Unexcused Tardiness.) *See also* DPM § 1605.4(f)(1); *See also* DPM § 1607.2(f)(1)(a).

² OEA Rule "Definitions § 699.1."

In case U-25-038 you failed to report for duty at the proper place and time on November 2, 2024. This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII §2.2 (f)(1) (Attendance-related offenses, including: Unexcused Tardiness.) *See also* DPM § 1605.4(f)(1); *See also* DPM § 1607.2(f)(1)(a).

In case U-25-063 you failed to report for duty at the proper place and time on December 12, 2024. This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII §2.2 (f)(1) (Attendance-related offenses, including: Unexcused Tardiness.) *See also* DPM § 1605.4(f)(1); *See also* DPM § 1607.2(f)(1)(a).

SUMMARY OF THE TESTIMONY

On April 24, 2025, Agency held a Fire Trial Board Panel hearing. During the hearing, testimony and evidence was presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as “Tr.”), generated and reproduced as a part of the Adverse Action Panel hearing.

Agency’s Case in Chief

Lieutenant Brian Kalb (“Lt. Kalb”) Tr. Pp. 18-58

Lt. Kalb has been with DCFEMS for over 20 years and is currently assigned to Truck 15, Platoon #4. Tr. 19. He testified that he had this same assignment from October 2024 to December 2024 and affirmed that Employee was assigned to his platoon. Tr. 19. Lt. Kalb stated that Employee joined Truck 15 in and around September 2024 or early October 2024. Tr. 20. Lt. Kalb affirmed that he was Employee’s direct supervisor. Lt. Kalb explained that he was responsible for a lineup, which was basically a roll call for all the members assigned in the firehouse that day. Tr. 20. He affirmed that he became aware that Employee did not show up on time for duty. He explained that usually employees arrive a few minutes before duty reporting time, which was 0700. Tr. 21. He said that if he could not find an employee, then a lineup is held. Lt. Kalb recalled that Employee was first tardy in October 2024. He identified Agency’s Exhibit 1 as his endorsement of Employee’s special report. Tr. 23. He explained that this report detailed what happened and that Employee was not present at 0700 for lineup. He also noted that a phone call was made to Employee and that the date of this incident was October 13, 2024. Tr. 23.

Lt. Kalb further explained that when a firefighter is running late for work, the Department does allow standbys with the approval of the company officer. Tr. 24. He noted that it is the responsibility of the member to arrange a standby. He also cited that if there is a medical issue, then sick leave may be utilized. Tr. 24. He affirmed that the Order Book indicates that a member has this responsibility. Tr. 25. Lt. Kalb testified that he did not hear from Employee until 7:45am on the October 13, 2024. He affirmed that Employee was tardy in November 2024. Lt. Kalb identified Agency’s Exhibit 2 as documentation that Employee was absent from lineup on November 2, 2024. Tr. 26. He identified the document as the copy of the company journal that logs all daily events at the firehouse. Tr. 27. He

affirmed that the journal cites to a call to Employee, but that the call went unanswered and a voicemail was left. Tr. 27. Lt. Kalb further testified that Employee reported for duty at 10:55am on November 2, 2024. Tr. 27. Lt. Kalb noted that he submitted a report for Employee's tardiness for that date. Tr. 28. Lt. Kalb affirmed that the journal reflected his notation that he counseled Employee about the importance of reporting on time for duty. Tr. 29. In reading the document, he cited that his notes indicated that "he had no way to determine when [Employee] was discharged from Kaiser due to the doctor's treatment verification was electronically signed and sent to at 1525 hours on 11-2 of '24." Tr. 29. Lt. Kalb affirmed that he had received that document from Employee. Tr. 30. He testified that he had asked Employee for the document through the day. He testified that he could not authenticate the document because it was sent at 3pm in the afternoon. Tr. 31. While it was not a standard practice to provide a verification form, Lt. Kalb noted that he would try to help his employees, so if they had something saying they were discharged because they were at urgent care etc., he would note that reason. Tr. 31.

Lt. Kalb testified that he did not know if Employee went to the Police Fire Clinic ("PFC"). Tr. 32. Lt. Kalb stated that while a PFC visit may not necessarily excuse an AWOL charge, it might prevent it in the first place. Tr. 34. Lt. Kalb testified that there was a time in December 2024 when Employee was tardy and identified Agency's Exhibit 3 as the report he prepared noting that Employee was tardy on December 12, 2024. Tr. 36-37. Lt. Kalb testified that he spoke to Employee and that Employee explained to him that his tardiness was due to "a psychological or something that was going on in his life that caused him to stress." Tr. 38. Lt. Kalb said he asked Employee if he was able to continue his tour of duty and Employee indicated that he could. Tr. 38. He also asked Employee if he needed peer support and Employee told him that he "had prior scheduled appointment with the PFC psychiatrist." Tr. 39. Lt. Kalb affirmed that he has previously written up members for tardiness prior to Employee. Tr. 39. He affirmed that he is required to cite the member for AWOL when they are tardy. Tr. 39. Lt. Kalb testified that a member's tardiness impacts the entire firehouse and the responsibilities required. Tr. 40.

On cross examination, Lt. Kalb testified that he did not know Employee before he was assigned to Truck 15. Tr. 41. He cited that he learned that Employee was hospitalized before the reassignment only after Employee told him a little background about it and how he had difficulties while at Engine 4. Tr. 41. Lt. Kalb affirmed that he told the Employee during that conversation that the "past is the past, and this would be a fresh start at Truck 15." Tr. 42. He affirmed that he encouraged members to give Employee a chance. He also affirmed that during his first three months, Employee was more reserved. Tr. 43. Lt. Kalb affirmed that Employee was AWOL for two hours on October 13, 2024, and was AWOL for five hours on November 2, 2024. Tr. 43-44. In review of Agency's Exhibit 1 page 57 for November 2nd, Lt. Kalb affirmed that he saw where Employee was still asleep due to medication and that on page 59 he had gone to Kaiser on November 1st. Tr. 45. Lt. Kalb affirmed that Employee was cited for two hours of AWOL on December 2, 2024. Tr. 46. He affirmed that Employee remained on full duty at Truck 15 into March 2025, and that his last AWOL was in December 2024. Tr. 47. Lt. Kalb testified that DCFEMS has punitive and non-punitive AWOL. He cited that Employee had not had any punitive AWOLs since the December 12, 2024, date. Tr. 47-48.

Lt. Kalb affirmed that Employee did not have any performance issues and got along with everyone at the firehouse. Tr. 48. He also cited that to the best of his knowledge, Employee had been honest with him. Lt. Kalb testified that he would like to see Employee return to full duty, and he doesn't hold anything personal against him and has no problem with him returning to Truck 15. Tr. 49. He affirmed that he would not have any concerns if Employee returned to Truck 15. Tr. 49. On redirect, Lt. Kalb stated that he knew Employee had some issues while at Engine 4. Tr. 50. Lt. Kalb cited that

he believed that Employee having three AWOLs within three months was an unusual amount of AWOL. Tr. 51. When asked by the Panel about Employee's leave, Lt. Kalb cited that when Employee came to Truck 15, he "was already in a...like a pay-back sick leave status, so he had negative sick leave balance..." Tr. 53. He reiterated that he talked to Employee about his first AWOL and advised him of the importance of timely arrivals etc. Tr. 55 Lt. Kalb cited that he could not speak for the other members regarding the standby status. Tr. 57.

Employee's Case in Chief

Employee Tr. Pp. 59 – 172

Employee testified that he joined DCFEMS on March 6, 2017. He cited that he always wanted to help people and that's why he joined. Tr. 60. After he completed his training at the academy, he went to Engine 4, as it was the first all-Black firehouse. Tr. 60. Initially, Employee cited that he had good support at Engine 4. He testified that once his original officer left, he had challenges with the new officer. Tr. 61. He identified Employee's Exhibit 1 as his transfer request dated August 1, 2022. Tr. 61. He cited that Lt. Ridgeway, Cpt. Steinberg and Chief Coombs approved his request. Tr. 61. He was not transferred in 2022 or 2023. He testified that in 2023, things got really bad for him at Engine 4. Tr.62. He was referred to the behavioral health coordinate because Lt. Ridgeway felt like he was going to commit suicide. Tr. 62. He also noted that his cousin was working with him and he went to Lt. Ridgeway to say he thought something deeper was going on with Employee. Tr. 63. He affirmed that on November 7, 2023, he was placed on FD12 and was taken to the hospital. Tr. 63 He was required to take an extended limited duty status after that hospitalization. Tr. 63. He identified Employee's Exhibit 2 as his limited duty certification form. Tr. 64. He also identified Employee's Exhibit 3 as the stress first aid program of Bulletin No. 42. Tr. 65. He noted that in November 2023, his stress color was "red". He affirmed that he sought therapy while he was on limited duty status. He started at the PFC but was told he would need more intense therapy because he had severe depression. Tr. 66. He then sought therapy at Kaiser through his health insurance. Tr. 66. He explained how the treatment worked and what he learned while in therapy at Kaiser. Tr. 66-68. He testified that it was his goal to return to full duty at Engine 4 because he wanted to show other people there that he was not the problem. Tr. 68. He was cleared to return to full duty once his stress color was "green." Tr. 70. He did not return to Engine 4 once he was return to full duty.

Employee identified Employee's Exhibit 4 as the special order 2024-227 which showed reassignments and the starting dates. Tr. 71. He read the first highlighted sentence which stated reassignments were effective at 0700 hours on Sunday, September 24, 2024. Tr. 71. Employee also confirmed that his name appeared in this list and that he was assigned Truck 15. Tr. 72. He was a bit panicked, nervous and anxious because he had not had much time to prepare and he had not previously been detailed to a truck. Tr. 72. He spoke with Chief Poles about the reassignment and Chief Poles told him that they thought it would be a good fit for him. Tr. 73. Employee testified that when he first arrived at Truck 15, his sick leave balance was in the negative due to a cancer scare. Tr. 75. He cited that following hospitalization and treatment, he had to pay back time, so that is why he had negative sick leave. Employee testified that he did not report for duty at 0700 on October 13, 2024, as required. He failed to report to work on time because he overslept. Tr. 77. He explained that because of his anxiety, he stayed up throughout the night. Tr. 78. He affirmed that he called his officer at 7:45am and reported for duty that day at 8:30am and assumed duty at 9:00am. He affirmed that he was officially AWOL for the first two hours on October 13, 2024. Tr. 70.

Employee also affirmed that he was supposed to report to work at 0700 hours on November 2, 2024, but he did not report on time because he was at Kaiser. Tr. 79. Employee explained that the night before he had a real bad migraine so he went to seek treatment but did not think he would be there overnight. He also stated that Kaiser gave him morphine which made him go to sleep. Tr. 79. He affirmed that his Lieutenant was first notified that he was asleep at the hospital at 8:15am, and that he reported to quarters at 10:55am and assumed duty at 12:30pm. Tr. 80. Employee also testified that he did not report for duty at 0700 on December 12, 2024. Employee explained that he had spoken with his therapist who told him that he sounded depressed. He said he went to sleep and did wake up, despite hearing his alarms. He heard his doorbell ringing and it was Engine 10 waking him up. Tr. 82. He called his Lieutenant at 0721 hours, reported at 0814 hours and assumed duty at 0900 hours that day. Tr. 82. He affirmed that he was AWOL for two hours that day. Tr. 82. Employee explained that he and Lt. Kalb talked, and Lt. Kalb told him that he was here to help and that he should become more comfortable. He also stated that Lt. Kalb told him to come to the Christmas party and to bring his partner as well. Employee explained that he talked to his partner, and he agreed to come to the Christmas party, so they both attended. Tr. 83. Employee explained that following that, he has had a great experience and loves Truck 15. He never thought he would be on a truck, but he really enjoyed it and felt comfortable bringing his partner to work related events, and in the past he did not feel comfortable. Tr. 84-85. Employee explained that his first chief made him feel uncomfortable about his sexuality. Tr. 86.

Employee went on to explain that his family had some concerns while he was at Engine 4, but Truck 15 felt like family. Tr. 89. Employee affirmed that after his last AWOL in December 2024, he remained on full duty with Truck 15 until March 2025. Tr. 90. He stated that he was not AWOL during that timeframe. He noted that his stress color was "green" and that he began to learn how to handle things more. Tr. 91. He agreed that Chief Coombs was right that Truck 15 was a good fit for him. Tr. 92. He affirmed that he continues to see his therapist at Kaiser. Employee testified that he was on light duty but wants to return to full duty and give his all.

On cross examination, Employee identified the October 13, 2024 AWOL memorandum. Tr. 94. He affirmed that he wrote that he overslept and did not activate his alarm and that it was a mistake he did not plan on repeating. Tr. 94. He affirmed that he again overslept in December 2024. He affirmed that he heard Lt. Kalb's testimony that he could not verify the doctor's note from the November 2, 2024 AWOL. Tr. 94. Employee testified that Lt. Kalb had to email his doctor for the note. He cited that the original note he gave Lt. Kalb just showed his discharge time and not that he had been treated overnight. Tr. 97. Employee affirmed that he received notification of the charges against him in January 2025. He cited that he recently had a copy of Agency's Exhibit 2. Tr. 99. Employee testified that he had contacted Kaiser, and they had not responded with his full medical records as requested. Tr. 99. Employee affirmed that the first note that he sent on November 2, 2024, was not in the record. Tr. 100-101.

Employee testified that he pled guilty to all three charges and that there was no need for him to fight after he gave them all the documentation, so he didn't know what to do. Tr. 102. Employee explained that he was not trying to make any excuses, but that he is not in the same space. Tr. 102-103. Employee affirmed that he was receiving mental health treatment in September 2024 and was seeing his Kaiser therapist. Tr. 103. He was not sure of the exact date he talked to his therapist about his concerns of being reassigned. Employee affirmed that he was not disputing the AWOL charges, but that he should be given a lesser penalty because he was going through mental health challenges during the time. Tr. 105. He also explained that he has ongoing mental health challenges, but he continues to work through it. Tr. 106-107. He also noted that his stress levels have been more balanced and that

even through the process, he hasn't been angry or sad. Tr.108-109. Employee explained that when he first started at the new assignment, he still had bad anxiety. Tr. 109-110. He didn't trust "higher ups" and so he remained quiet and dealt with as much as he could. Tr. 111.

Employee testified that the DCFEMS can be confident that he has changed because he is in a good place and continues to work on what he needs to be a good firefighter/member. He reiterated that he loves Truck 15 and he wants a chance to go back. Employee testified that a lesser penalty could be that he "got hours", but that termination is not appropriate in the circumstances. Tr. 113. Employee identified (Agency's Exhibit 4) a Final Decision for a 12-hour suspension for AWOL on May13, 2022. He affirmed that he was AWOL because he overslept. Tr. 114. He also identified an official reprimand for AWOL on October 12, 2022, and a final agency decision imposing another 12-hour suspension for AWOL on October 28, 2022. Tr. 116-117. Employee affirmed that charge was because he failed to notify his supervisor that he was on leave for a doctor's appointment. Tr. 118. He also identified another official reprimand for AWOL on December 3, 2022, where he was AWOL for two hours due to his having overslept. Tr. 118. Employee again identified a final notice for a 12-hour suspension for AWOL on February 12, 2023, which was because he did not report for duty on time. Tr. 119. Employee also identified a final decision imposing a 36-hour suspension for AWOL on July 15, 2023, and another 12-hour suspension for AWOL which he served on October 21, 2024.

Employee affirmed that there were nine (9) previous disciplinary actions, six (6) of which were for AWOL. Tr. 123. He affirmed that the penalty did get more severe for each infraction. Tr. 124. Employee affirmed that the November 2, 2024 AWOL was not for mental health. Tr. 127. Employee also explained that he was not aware that he had slept so long when given morphine. Tr. 129. Employee explained that he had a migraine on November 1, 2024, and his usual medicine didn't work. Tr. 131. He determined he would go to Kaiser to get checked out because of the pounding. Tr. 132. He and his partner biked to the Kaiser hospital. Tr. 132. Employee testified that he didn't call his officer on the night of November 1, 2024, because he planned on going to work the next day. Tr. 133. He stated that his partner was awake on November 2, 2024, but cited that Employee was coherent, so he couldn't wake him. Tr. 133. Employee affirmed that he did contact his supervisor prior to 0700 on November 2, 2024. Tr. 134. Employee affirmed that he was AWOL on October 13, 2024, because of a death in the family and that he overslept due to not activating his alarm. Tr. 139. Employee explained that because he dealt with mental illness, experiences of loss impacted him mentally. Tr. 139-140. Employee affirmed that he started with Agency on March 6, 2017, and that 0700 hours has always been his duty schedule. Tr. 141. Employee explained that he did not always set nightly alarms. Tr. 141-142. Employee also iterated that 2022 was one of his worst years with DCFEMS. Tr. 145. Employee affirmed that he was aware that oversleeping and being late for duty could lead to disciplinary action. Tr. 148. Employee agreed that he was warned that he could be subject to discipline for oversleeping etc. Tr. 149. He asserted that he overslept due to medication. Tr. 149. He testified that he was not on the medicine when he received the December 2024 AWOL because they had determined the medicine was too strong.

On redirect, Employee testified that the previous disciplinary actions did not occur after his long term limited duty status that followed his FD-12 and hospitalization. Tr. 151. When asked by the Panel if he had received an official diagnosis, Employee explained that he was told he suffered from severe depression. Tr. 151. He affirmed that the PFC was aware of this diagnosis. Tr. 152. Employee also noted that he is not on a prescribed medication on a regular basis. Tr. 153. Employee explained to the Panel that regarding the AWOL that he received after the death of his cousin, he didn't have any bereavement days and did not want to exhaust the sick leave that he still didn't have, so he knew he had to go to work. Tr. 154. Employee did affirm that he had previously done "day off trades." Tr.

155-156. Employee testified that he had been on light duty since March 2025 due to the trial board hearing. He testified that prior to the beginning of his tenure in 2017, he had not had any mental health challenge/history. Tr. 156-157.

Employee explained that the onset of his mental health challenges began in and around 2021. He explained that he had some health issues and the challenges with Engine 4 precipitated his mental health illness challenges. Tr. 158. The Panel asked Employee about the November 2024 AWOL where he went to Kaiser and was AWOL for five hours. Employee stated that he did not leave Kaiser and he called Lt. Kalb when he was leaving Kaiser and that it was still in the morning. Tr. 159. Employee explained that when he left Kaiser, he went home to shower and dress and then reported to work. Tr. 159. Employee affirmed that he was provided with discharge papers when he left the hospital. He said he had those but needed a doctor's note because the discharge papers had HIPPA protected information. Tr. 160. Employee cited that Lt. Kalb received the original doctor's note which gave the time he was leaving the hospital. Tr. 162. Employee also affirmed to the Panel that he had been coming into work regularly and was happy at Truck 15 and he has had details at other stations. Tr. 163. Employee affirmed that if he were detailed elsewhere that he would be able to cope if given the opportunity. Tr. 165. Employee affirmed to the Panel that he submitted a transfer request in August 2022, and submitted another, but did not know what happened to it. Tr. 168-169. Employee stated that he submitted one to Lt. O'Brien and Lt. Ridgeway. Tr. 169. Employee affirmed to the Panel that he did exercise the Department's standby procedures when he was at Engine 4. Tr. 171.

Stephen Gallo ("Gallo") Tr. 173- 187

Gallo testified that he has been a firefighter with DCFEMS for approximately a year and a half, joining in December 2023. He noted that his current rank is a firefighter/EMT. Tr. 174. Gallo explained that he is assigned to Engine 26, Platoon No. 4. He first met Employee when he was assigned to Truck 15 in October 2024. Tr. 174. Gallo explained that he had heard about Employee because he had friend at Engine 4. Tr. 174. He was skeptical because of what he had heard, but when he met Employee, he found all that to be wrong. Gallo stated that Employee was a great employee and that he got to know him "pretty well working in an ambulance for 24 hours." Tr. 175. Gallo stated that Employee was a little reserved when he first came to Truck 15, but later he opened up a lot more and became involved in the house. Tr. 175. He said Employee had a positive attitude and that his performance on the truck most recently had been good. Tr. 176-177. Gallo testified that since January 2025, he has had no reason to doubt Employee's reliability, citing that he is extremely helpful and kind. He stated that he would like to see Employee returned to full duty.

On cross examination, Gallo was asked if he was familiar with Order Book Article 7. After it was explained that it relates to AWOL and discipline, Gallo noted he had a rough time frame of the dates that Employee was AWOL. Tr. 180. He also noted he was informed that Employee had prior disciplinary actions since 2022, six of which were for AWOL. Tr. 180. He did not know that Employee had served a cumulative of 72 hours of suspension and received two reprimands for AWOL. Tr. 181. Gallo explained that he is former military, so he takes AWOL seriously. He testified that knowing Employee's story, he believes that context matters in this situation. Tr. 181. Gallo did not know that Employee had pleaded guilty to the AWOL charges. Gallo stated that he believed mental health plays a role based on his own experience with familiar members. Tr. 183. When asked by the Panel if the entire shift know of Employee's challenges, Gallo answered that Employee had shared with those he felt comfortable with. Tr. 184. Gallo testified that he sees Employee usually show up for work around 6:15am for the Truck and 6:20/6:30am for the ambulance. He has also seen Employee report at 6:00am.

Gallo noted that the time members show up varies but everyone is supposed to be there by 0700. Tr. 186. Gallo testified that standbys can be found if needed. Tr. 187.

Lieutenant Mark Johnson (“Lt. Johnson”) Tr. Ppg 188-196

Lt. Johnson testified that he joined DCFEMS in September 2008 and became a Lieutenant in December 2024. Tr. 188. He is currently assigned to Engine 26 and Platoon No. 4. Tr. 18. He first met Employee shortly after he arrived at Engine 26. He affirmed that Employee was on full duty at the firehouse when he started in December 2024 through March 2025. Lt. Johnson testified that he had a great experience working with Employee and that he did everything he was supposed to do. Tr. 190. He noted that Employee is a great EMT and is an asset to the Department. Tr. 190. He also noted that Employee has a great attitude, never complained and contributed to all his responsibilities. Tr. 190-191. Lt. Johnson was not aware of any performance related issues for Employee since he has been working with him. Tr. 191. He testified that Employee shared with him about some mental health experiences and counseling that he was in. Tr. 191. He affirmed that Employee got along with everyone. Tr. 192. Lt. Johnson testified that he did not believe Employee should be terminated for the AWOL charges because there were extenuating circumstances and there are other types of disciplinary actions. Tr. 192.

On cross examination, Lt. Johnson stated that he was not aware that Employee was pleading guilty to the AWOL charges. He affirmed he was aware of Order Book Article 7 regarding AWOL. Lt. Johnson testified that he was aware of Employee’s previous disciplinary history but was not aware that he had served a cumulative of 72 hours suspension and had two reprimands for AWOL. Tr. 194. He agreed that showing up late for duty inconveniences other members. Tr. 195. Lt. Johnson cited that Employee had shared with him about the mental health challenges he had dealt with. Tr. 196.

Panel Findings

The Panel made the following findings of fact based on their review of the evidence presented at the hearing. The Panel found for Case Numbers U-25-016, U-25-038, and U-25-063 that³:

1. “[Employee] has demonstrated a persistent pattern of unexcused tardiness, which has negatively affected the Department’s operational efficiency and ability to uphold its mission.
2. His repeated failure to report for duty on time compromises the reliability and effectiveness of emergency response services.
3. [Employee] has not made improvements or learned from his previous incidents.

Upon consideration and evaluation of all of the testimony and factors, the Panel unanimously found Employee guilty on all three (3) charges. The Panel cited that it reviewed all of the testimony and documents in the record. Following its review and consideration of the *Douglas* Factors, the Panel unanimously recommended that Employee be terminated from DCFEMS.⁴

³ The Panel issued a decision for all three (3) cases. Each decision was substantially similar and incorporated the same record/evidence in its review of the Employee’s matter. Further, the *Douglas* factor analysis for each case number was the same as well.

⁴ Agency Answer at Tabs 13-16 (November 16, 2025).

ANALYSIS AND CONCLUSIONS⁵

This Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*.⁶ According to the *Pinkard* decision, OEA has a limited role where a departmental hearing has been held. The D.C. Court of Appeals held that while OEA generally has jurisdiction over employee appeals from a final agency decision involving adverse actions under the CMPA⁷, in a matter where a departmental hearing has been held:

“OEA may not substitute its judgement for that of an agency. Its review of the agency decision...is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency's credibility determinations.”

Further, the Court of Appeals held that OEA's power to establish its own appellate procedures is limited by the agency's collective bargaining agreements. As a result, and in accordance with *Pinkard*, an Administrative Judge of OEA may not conduct a de novo hearing in an appeal before them, but rather, must base their decision on the record when all of the following conditions are met:

1. The appellant (employee) is an employee of the Metropolitan Police Department or the D.C. Fire and Emergency Medical Services Department;
2. The employee has been subject to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard* i.e. “[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing has been held, any further appeal shall be based solely on the record established in the Department hearing”; and
5. At the agency level, employee appeared before a panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action of the deciding official that resulted in an adverse action being taken against employee.

In this case, Employee is a member of the D.C. Fire and Emergency Medical Services Department (DCFEMS) and was the subject of an adverse action. Further, DCFEMS' collective bargaining agreement contains language similar to that found in *Pinkard*; and Employee appeared before a Trial Board Panel, which held a hearing. Based on the documents of record, and the position of the parties as stated in the briefs submitted herein, the undersigned finds that all the aforementioned criteria are met in this instant appeal. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgment for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of whether the Trial Board Panel's findings were supported by substantial evidence, whether there was harmful error, and whether the action taken was done in accordance with applicable laws or regulations.

⁵ 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”).

⁶ 801 A.2d 86 (D.C. 2002)

⁷ See D.C. Code §§ 1-606.02 (a)(2), 1-606.03(a)(c); 1-606.04 (2001).

Whether the Panel's Decision was supported by Substantial Evidence

Pursuant to *Pinkard*, the undersigned must determine whether the Panel's ("Panel") findings were supported by substantial evidence.⁸ "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁹ If the [Panel] findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record¹⁰ to support findings to the contrary.¹¹

Employee avers that the "Agency's narrative presents a pattern of misconduct while omitting critical facts central to this case: a documented hostile work environment beginning in 2022, repeated transfer requests, medically documented mental health treatment, medication-induced impairment, and a full 9 months of successful, incident-free service."¹² Employee asserts that Agency presents the AWOL incidences "totaling nine hours as evidence of unreliability."¹³ Employee also argues that the Agency improperly relied on "stale disciplinary actions" which "improperly inflates the appearance of a patter of misconduct and undermines the fairness of the proceeding."¹⁴ Employee reiterates that the Panel failed to account for the period of time for which he was receiving "medically documented mental health treatment."¹⁵ As such, Employees maintains that the conduct was not "willful misconduct but rather a direct consequence of a medical condition and prescribed treatment." To this end, Employee avers that "Agency's reliance on outdated disciplinary actions, combined with its failure to properly consider the medical and workplace factors underlying the conduct, constitutes a clear misapplication of factors and renders the penalty of termination excessive, arbitrary, and unsupported by the record."¹⁶

Agency asserts that there was substantial evidence to support the Panel's decision in this matter. Agency avers that 6-B DCMR §1602.1 permits agencies to discipline employees for cause.¹⁷ Agency also asserts that "Employee pled guilty to all three charges...[t]herefore there is substantial evidence to support the Panel's findings that Agency had cause to discipline Employee in all three cases."¹⁸ Agency argues that because cause was determined, it has the "primary discretion in assessing the degree of discipline the conduct warrants." Agency maintains that termination was an appropriate penalty in this matter and that Employee's past disciplinary record, which included "nine (9) instances of discipline in three years, including six (6) instances of AWOL, show that he is unreliable and prone to excessive tardiness."¹⁹ Agency avers that the Panel did a thorough review and consideration of all the Douglas factors in this matter, and that Employee's past disciplinary record made Douglas Factor 3 aggravating. Agency also asserts that Employee's mental health issues and medical challenges were considered in review of the Douglas factors. This noted, Agency avers that "it was Employee's responsibility to make sure he showed up for work on time, and nothing out of Employee's control prevented him from doing so." As such, Agency contends that the Panel "properly determined that

⁸ *Elton Pinkard v. DC Metropolitan Police Department*, 801 A.2d at page 91. (2002).

⁹ *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 at 985 (D.C. 2002).

¹⁰ Employee's Brief at Page 19 (December 27, 2022).

¹¹ *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1189 (D.C. 1989).

¹² Employee's Response at Pages 1 -2 (April 6, 2026).

¹³ *Id.* at Page 3.

¹⁴ *Id.* at Page 5.

¹⁵ *Id.*

¹⁶ *Id.* at Page 6.

¹⁷ Agency's Brief at Page 7. (February 20, 2026).

¹⁸ *Id.*

¹⁹ *Id.*

mitigating circumstances did not exist to excuse the AWOLs Employee incurred on October 13, 2024, November 2, 2024, or December 16, 2024.²⁰

Agency also avers that Employee's claims that the Panel "relied on stale discipline" in consideration of *Douglas* factor 3 to be false.²¹ Agency argues that the "oldest instance of discipline the Panel relied upon was from an AWOL incident on May 13, 2022 (U-22-491) for which he received a 12-hour suspension served on March 13, 2023."²² Agency also avers that Employee's reliance on witness testimony in his ability to perform does not change the Panel's findings as it related to *Douglas* factor 5, in that it determined that "Employee's AWOLs significantly undermined his ability to do his job."²³ Agency maintains that it considered Employee's mental health challenges, but determined this were not mitigating circumstances to excuse the conduct.²⁴ Agency avers that "the Panel did consider Employee's life and job-related tensions..."²⁵

In review of the record and the transcript of the Trial Board hearing, I find the Panel's factual findings to be consistent with the testimony and evidence provided during the Trial Board Hearing. Further, the Panel was actively engaged in the hearing and asked questions of the witnesses and Employee. I find that the Panel conducted a thorough and conscientious review of the *Douglas* factors in making its final determinations the charges. It is also of note that Employee pled guilty to all the charges. Wherefore, the undersigned finds that Employee's claims that Agency lacked substantial evidence to be unsupported by the record presented. For the reasons as previously noted, I find that Agency has met its burden for substantial evidence in the charges against Employee.

Whether there was harmful procedural error.

In accordance with *Pinkard* and OEA Rule 631.3, the undersigned is required to evaluate and make determinations as to whether there are any harmful procedural errors in the administration of the instant action. OEA Rule 634.6 provides as follows: "notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action."

Employee avers that Agency "failed to consider Exhibits 7-11, undermining the fairness of the proceeding and constituting harmful procedural error."²⁶ Employee argues that this failure "to consider key evidence, properly apply the law, and include relevant exhibits materially affected the outcome." Agency asserts that Employee failed to identify procedural errors. Agency avers that "Exhibits 8 and 9 were included in the record and considered by the Panel...[w]ith regard to Exhibits 7, 10 and 11, even if they were admitted into evidence, they would not have had an effect on the Panel's decision because they did not excuse or mitigate Employee's AWOLs."²⁷ Agency also avers that Employee, who was represented by counsel at the hearing, "did not provide any medical documentation besides what is included in the record." As such, Agency avers that Employee's claim that the case cannot be

²⁰ *Id.* at Pages 8-12.

²¹ Agency's Sur Reply Brief at Page 2.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at Page 3.

²⁵ *Id.* at Page 4.

²⁶ Employee's Response at Page 3. (April 6, 2026).

²⁷ Agency's Sur Reply brief at Page 5. (April 24, 2026).

fairly evaluated is unsupported by the record.²⁸ Agency also maintains that “even though Employee had ample opportunity to produce supporting medical documentation at the hearing, he failed to do so.”²⁹

Pursuant to *Pinkard*, the undersigned must determine whether there was harmful procedural error in Agency’s administration of the instant action. In accordance with the previously cited OEA rule, I find that the record does not support Employee’s claims of harmful procedural error. Further, the undersigned noted in review of the transcript of the Panel hearing that Employee was represented by counsel before that tribunal. The record is void of any evidence to suggest that there was an error that substantially harmed employee’s rights or significantly impacted Agency’s decision to terminate Employee from service. As a result, I find that there were no harmful procedural errors committed in the administration of the adverse action.

Whether Agency’s action was done in accordance with applicable laws or regulations (Appropriateness of Penalty).

Employee avers that the Panel did not give due consideration to the *Douglas* factors in its determination to separate him from service. Specifically, Employee avers that Agency failed to consider his medically documented mental health challenges and treatment. Employee also avers that Agency failed to consider the testimony of other members who cited that he could perform his job well. Employee also avers that Agency’s reliance on “stale discipline” gave a “narrative” that “presents a pattern of misconduct while omitting critical facts central to the case...”³⁰ Employee also avers that Agency violated the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA) in its administration of the instant action. To this end, Employee maintains that Agency’s penalty of termination was unwarranted and that he should be reinstated to his position of record.

Agency avers that its decision to terminate Employee from service was in accordance with all applicable laws, rules and regulations. Further, Agency asserts that “agencies are permitted to discipline an employee when there is cause to do so.”³¹ Agency further cites that “once cause is established, an agency has primary discretion in assessing the degree of discipline that the conduct warrants.”³² Agency argues that “termination was the reasonable and appropriate penalty for Employee’s misconduct in all three cases.”³³ It maintains that the Panel conducted a conscientious review of the *Douglas* Factors and found that Employee’s past disciplinary record made Factor 3 ‘aggravating.’ Agency asserts that the Panel’s findings that Employee was prone to “excessive tardiness” was supported by the record. Agency contends that Employee’s claims regarding Agency’s violation of the ADA and/or FMLA to be unsupported allegations.³⁴ Agency also avers that “Employee never requested an accommodation or medical leave, and Agency has no obligation to proactively provide an employee with an accommodation or medical leave without a request.”³⁵ Agency maintains that its action of terminating Employee from service was an appropriate penalty in the circumstances

²⁸ *Id.*

²⁹ *Id.*

³⁰ Employee’s Response at Page 1 (April 6, 2026).

³¹ Agency Brief at Page 7 (February 20, 2026).

³² *Id.* citing to *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1984).

³³ *Id.* at Page 7.

³⁴ Agency’s Sur Reply at Page 5 (April 24, 2026).

³⁵ *Id.*

and in accordance with all applicable regulations. As such, Agency asserts that Employee's termination should be upheld.

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).³⁶ 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.³⁷ 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."³⁸ In the instant matter, I find that Agency followed all appropriate laws, rules and regulations in its administration of the instant action. Further, I find that Employee's claims regarding the *Douglas*³⁹ Factors reflect a disagreement with the Agency's determinations in this matter,

³⁶ 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).

³⁷ *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)).

³⁸ *Id.* See also. *Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

³⁹ *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 it's 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.

and the record does not support a finding that the Agency's actions were otherwise arbitrary or capricious. Additionally, I find that the record is clear that the Panel gave due consideration and review to the *Douglas* factors in making its determinations and findings, and in sustaining the charges. Accordingly, for the aforementioned reasons, I find that Agency's action of terminating Employee from service should be upheld.

ORDER

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

FOR THE OFFICE:

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