THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0041-24
	)	
v.	)	Date of Issuance: September 25, 2024
	)	
DISTRICT OF COLUMBIA	)	
FIRE AND EMERGENCY MEDICAL	)	
SERVICES DEPARTMENT,	)	MONICA DOHNJI, ESQ.
Agency	)	Senior Administrative Judge
	)	

Employee, *Pro Se*
Connor Finch, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 8, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Fire and Emergency Medical Services Department's ("Agency" or "FEMS") decision to terminate him from his position as a Firefighter/Paramedic effective March 9, 2024. OEA issued a Request for Agency Answer to Petition for Appeal on April 8, 2024. Agency submitted its Answer to Employee's Petition for Appeal on May 8, 2024. This matter was assigned to the undersigned on May 9, 2024.

On May 16, 2024, the undersigned issued an Order Convening a Status/Prehearing Conference in this matter for June 11, 2024. During the Status/Prehearing Conference, the undersigned was informed that an Adverse Action Panel Hearing was convened in this matter on January 17, 2024. As such, OEA's review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department,* 801 A.2d 86 (D.C. 2002). Thereafter, I issued a Post Status Conference Order on June 13, 2024, requiring the parties to submit briefs addressing the issues raised during the Status/Prehearing Conference. Agency's brief was due on or before July 5, 2024; Employee's brief was due by July 26, 2024; and Agency had the option to submit a sur-reply by August 9, 2024.

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

On July 3, 2024, Agency filed its Opposed Motion for Extension of Time, requesting that its briefing deadline be extended to July 8, 2024. Agency submitted its brief on July 8, 2024, as requested in its Motion. However, Employee did not file his brief by the July 26, 2024, deadline or request an extension to do so. Accordingly, on July 31, 2024, the undersigned issued an Order for Statement of Good Cause to Employee, requesting that Employee submit his brief and a statement of good cause for his failure to comply with the July 13, 2024, Order, by August 14, 2024. Employee complied with this Order. Subsequently, on August 16, 2024, Agency filed a Motion to Strike Employee's Brief or in the alternative, provide Agency with an opportunity to respond to Employee's brief. Agency's Motion to Strike was denied in an Order dated August 19, 2024. However, this Order granted Agency's request to file a response to Employee's brief by September 6, 2024. Both parties filed briefs with this Office on September 6, 2024. The record is now closed.

JURISDICTION

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

ISSUES

1) Whether the Trial Board's decision was supported by substantial evidence;

2) Whether there was harmful procedural error; and

3) Whether Agency's action was done in accordance with 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

According to Agency's Answer to Employee's Petition for Appeal[3], Employee's adverse action was predicated on the following charges and specifications, which are reprinted in pertinent part below:

[2] OEA Rule § 699.1.

Case No. U-23-327

Charge 1: Violation of D.C. Official Code § 7-2341.05, Emergency Medical Services Personnel: Certification Required, which states:

> (a) Except as otherwise provided in this chapter, no person shall perform the duties of emergency medical services personnel in the District, whether for compensation or not for compensation, without first having obtained a certification from the Mayor to do so.

Further violation of Order Book Article XXIV, § 3, Certification and Credential Requirements,[4] which states:

> 2) All EMS providers, including uniformed firefighters hired on or after January 1, 1987, are required to maintain, at minimum, Emergency Medical Technician certification upon completion of training and for the duration of employment. Members who are in job classifications that require higher certifications are required to maintain those as well. **It is the responsibility of the individual member** to ensure that a valid EMT / EMT–I / Paramedic / CPR / ACLS card is maintained per DOH requirements.

Further violation of D.C. Fire and Emergency Medical Services Department Bulletin No. 83, **NREMT Certification Policy**, which states:

> All D.C. Fire and EMS Department employees will be required to complete the National Registry certification process at their respective certification level (EMT–B, EMT–IP, or EMT–P) and maintain both National Registry certification and District of Columbia (D.C. Department of Health) certification.

Further violation of Position Description **FIREFIGHTER I PARAMEDIC, FS–0081–01**, which states:

> OTHER SIGNIFICANT FACTORS
>
> ***
>
> The incumbent must successfully complete the Basic Probation Training Course and Evaluation Program, and will maintain the following minimum certifications for the duration of employment: Firefighter I and II, hazardous materials awareness and operations,

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[3] Agency Answer at Tab 27 (May 8, 2024).
[4] See also D.C. Fire and Emergency Medical Services Department Memorandum No. 144, Series 2013, NREMT Recertification Requirements.

> Emergency Medical Technician–Paramedic (EMT–P), cardiopulmonary resuscitation (CPR) Basic Life Support card, and Advanced Cardiac Life Support (ACLS) card and any other certifications that may subsequently be required to maintain qualification as a Firefighter/Paramedic.
>
> * * *
>
> **Licensure / Certifications**
>
> **Employee must hold and maintain the following certifications as a condition of employment:** Firefighter I and II; **Emergency Medical Technician–Paramedic (EMT–P)**; cardiopulmonary resuscitation (CPR) Basic Life Support, and Advanced Cardiac Life Support (ACLS).

This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department 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." See also 16 DPM § 1603.3(f)(3) (rev. 08/27/2012); see also 16 DPM § 1605.4(e) (rev. 06/12/2019).

Specification 1: In his Notice of ALS Sponsorship Withdrawal letter (dated 05/10/2022), Medical Director Robert P. Holman, M.D. provides the following information to DC Health Chief Medical Officer Brian W. Amy, M.D.:

> I am writing to notify DC Health that I am withdrawing my sponsorship from one of our members, Firefighter / Paramedic [Employee], to practice as an Advance Life Support (ALS) provider under my medical license.
>
> * * *
>
> [It] was determined that FF/P [Employee] was not meeting the minimum standards of an independent ALS provider, and that he would undergo a remediation process with a Field Training Officer (FTO) for a period of seven (7) tours of duty with daily evaluations consistent with the Field Training Evaluation Program (FTEP). A Remediation Plan was created detailing FF/P [Employee's] deficiencies and requiring him to work with the FTO through self-study and guided remediation of the deficient areas. Daily Observation Reports (DOR's) were to be completed by the FTO prior to the end of each shift and signed by FF/P [Employee]. The FTO prepared and submitted DOR's corresponding with FF/P [Employee's] December 19, 23 and 28, 2021 tours as well as his January 2, 5, 12 and 16, 2022 tours.
>
> * * *
>
> On January 20, 2022, I met with and interviewed FF/P [Employee] about his deficient performance during remediation[.]
>
> * * *
>
> Based on my review of the CQI materials as well as FF/P [Employee's] deficient remediation performance combined with his responses provided during the Medical Director interview, I am writing to inform you of my decision to withdraw sponsorship

> from [Employee] as an ALS / paramedic provider under my medical license.

In its Notice of Summary Revocation of EMS Certification (dated 06/28/2022), the District of Columbia Department of Health advised as follows:

> [T]he District of Columbia Department of Health ("DC Health") hereby gives you notice that disciplinary action has been taken against you with respect to your certification to provide emergency medical services in the District of Columbia as a PARAMEDIC, DC Health Emergency Medical Services (EMS) Certification No. P–17708.
>
> DC Health has sufficient evidence from your employer's official records which justifies taking the action. The charge upon which the disciplinary action is based is set forth below.
>
> **Charge I**: **Pursuant to D.C. Official Code §7–2341.16 and 29 DCMR § 29–563.17 Sufficient grounds for denial, suspension, or revocation of a certification granted to an emergency medical services provider, or reprimand of the provider, shall include: (z) Withdrawal of sponsorship by the sponsoring medical director.**
>
> **Specification**: DC Health has been notified that Robert P. Holman, DR. in his role as Medical Director of Washington DC Fire and EMS has rescinded sponsorship of your certification. (Exhibit A)
>
> * * *
>
> **Due Process**: You have the right to request a hearing on this matter by delivering a written request for hearing to the District of Columbia Office of Administrative Hearings, within five (5) calendar days after service of this notice, in accordance with the [sic] Section 2808 of the Office of Administrative Hearings Rules of Practice and Procedure.
>
> * * *
>
> If a hearing is not requested within the time and in the manner specified, the Department of Health's action will be final without a hearing.

Further, in her Final Order (dated 07/07/2022), Office of Administrative Hearings (OAH) Judge Leslie A. Meek ruled as follows:

> On June 28, 2022, the District of Columbia Department of Health (DOH) issued to Petitioner, a Notice of Summary Revocation of EMS Certification (Notice). Petitioner appealed the Notice and requested a hearing on the matter. A Status Conference was scheduled for and convened on July 7, 2022. [Employee] and Robert Pearson appeared on Petitioner's behalf. Marie Claire Brown, Esquire appeared on behalf of the Department of Health.

> At the Status Conference, the parties discussed the fact that the certification that was at issue in the Notice has since expired. The parties also discussed the fact that [Employee's] certification is current, and he is, at this time, being sponsored while employed by American Medical Response. [Employee] advised that he no longer wished to pursue an appeal of the Notice. As a result of [Employee] assertion, the Department of Health set forth a Motion to Dismiss this matter. [Employee] had no objection, and the motion is hereby granted.
>
> Therefore, it is this 7th day of July 2022:
>
> **ORDERED**, that **DOH's MOTION** is **GRANTED**, and this **CASE** is **DISMISSED WITH PREJUDICE**

Further, in his Special Report (dated 05/25/2023), Deputy Fire Chief Anthony P. Kelleher describes FF/P [Employee's] misconduct as follows:

> On June 28, 2022 the District of Columbia Department of Health issued a Notice of Summary Revocation of EMS Certification to [Firefighter/Paramedic] [Employee]. [FF/P] [Employee] appealed the notice and requested a Status Conference, which was held on July 7, 2022. In the time between the issuance of the Notice of Summary Revocation and the Status Conference, [FF/P] [Employee's] ACLS [Advance Cardiac Life Support] and PALS [Pediatric Advance Life Support] credentials expired. Additionally, as a result of the overall process, Medical Director Doctor Robert P. Holman, has revoked sponsorship of the member as a practicing medical provider.

FF/P [Employee] is unable to demonstrate competence to serve as a provider for the Department, resulting in his sponsorship withdrawal by the Medical Director and certification revocation through the Department by D.C. Health. Accordingly, he is unable to maintain his DOH paramedic certification, which is a condition of employment and a responsibility of his job function. FF/P [Employee's] failure to follow instructions, failure to carry out assigned tasks, and careless / negligent work habits constitutes neglect of duty. Accordingly, this termination action is proposed.

On January 17, 2024, Employee appeared before a Fire Trial Board. He was represented by counsel and pled Not Guilty to Charge No. 1 and Specification No. 1.[5] The Trial Board found Employee guilty of Charge No. 1 and Specification No. 1

SUMMARY OF THE TESTIMONY[6]

On January 17, 2024, Agency held a Trial Board Hearing in this matter. During the hearing, testimony and evidence were presented for consideration and adjudication relative to the instant matter.

[5] *Id*.
[6] *Id*. at Tab 26.

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 part of the Trial Board Hearing.

Agency's Case-in-Chief

1) Robert Holman – Tr. pgs. 28-63

Robert Holman ("Dr. Holman") works at Agency as the Medical Director. His duties in this role include overseeing all the medical care for the department, participating in training, protocol development, and the quality improvement process. He asserted that the office of the Medical Director also has a peer review section, formerly known as the Continuous Quality Improvement ("CQI") where they receive complaints and review patient care notes for irregularities that require investigation. Tr. pgs. 28-29.

Dr. Holman testified that there are 2100 members in Agency who practice under his medical license. He cited that these members render care and are certified by the Department of Health ("DOH") and the D.C. Government. Dr. Holman testified that when he sponsors a member, on paper, he notifies the DOH that he is sponsoring the member under his medical license. He explained that as a Medical Director for an agency in public safety, he proclaims to the government officials, the mayor, the council and the public that he is certifying these members as safe to practice. Dr. Holman averred that they have his endorsement for practicing at the level of EMT or at the level of a paramedic for patients in the District. Tr. pgs. 30 -31.

Dr. Holman testified that in 2021, his office received a complaint about Employee, which was placed in their tracker and investigated, as was the practice. He confirmed that he was involved in the review at this initial stage. Dr. Holman asserted that in mid-December 2021, he and his team met with Employee to articulate their concerns, the deficiencies and provided Employee with a remediation package. Dr. Holman also stated that because there had been two (2) 'archive' cases from a few years earlier involving Employee, his team physically met with Employee and put together a prescription which described the three (3) areas of concern that needed improvement. He averred that Employee was also informed that he would be placed in formal remediation for eight (8) tours with a Field Training Officer ("FTO").[7] He cited that this was articulated to Employee and the remediation program was initiated. Dr. Holman confirmed that the FTO and the paramedic involved receive a written plan for the remediation process. Tr. pgs. 32 – 35, 42-43.

Dr. Holman testified that the eight (8) tours consisted of Daily Observation Reports ("DOR") wherein, the FTO evaluates and grades several different areas for each of the clinical cases assigned to them to ensure good patient care is observed.[8] Dr. Holman asserted that the eight (8) tours went from late December of 2021, through early January of 2022. Tr. pgs. 35 – 36. He asserted that he was not sure if the remediation plan with the areas of improvement was given to the assigned FTOs verbally or in writing. Tr. pg. 51. Dr. Holman testified that the December 15, 2021, meeting with Employee summarized their

[7] He described an FTO as "an individual who is formally selected and trained in how to evaluate clinical performance, and how to give constructive feedback to an individual in either RTO training and education program, or in remediation through peer review."

[8] The FTO evaluation focuses on whether the member (1) took good history; (2) did a good physical assessment; (3) applied the diagnostics; (4) applied the therapeutics in a reasonable amount of time; (5) engaged in proper clinical decision making; and (6) took proper documentation.

peer review investigation; outlined the clinical deficiencies; and articulated that Employee would be entering a remediation process where he could focus on ameliorating those deficiencies. Tr. pg. 60.

According to Dr. Holman, after the eight (8) tours, he had a discussion with the individuals that supervised Employee's remediation process to ascertain Employee's progress and the result of the remediation. He also averred that he examined Employee's daily observation reports during the eight (8) tours, and they showed serious deficiencies and approximately six (6) of the eight (8) tours had 'critical fails' or 'serious deficiencies.' Dr. Holman testified that amongst other issues, it was remarked on several of Employee's evaluations that he was having difficulties receiving feedback. Dr. Holman cited that Employee had at least two (2) FTOs during this process, FTO Davis and FTO Nguyen. He explained that it was typical to assign more than one (1) FTO to a member in the remediation process so they can get two (2) different perspectives on the member's performance. Tr. pgs. 36 – 37, 43.

Dr. Holman testified that after he received feedback on Employee's performance in the remediation process after the eight (8) tours, Cpt. Ca'Merono[9], Sgt. O'Byrne and Dr. Holman had a conversation with Employee in mid or late January 2022, and he informed Employee that "he did not successfully remediate." Dr. Holman stated that he placed Employee in 'no patient contact', Employee was removed from patient care, and he notified the Fire Chief, who in turn notified Agency's general counsel about the process to withdraw Dr. Holman's sponsorship of Employee. Dr. Holman explained that he withdrew his sponsorship for Employee because "… it was determined that [Employee] could not provide good patient care that was safe." Tr. pgs. 38-40. Dr. Holman affirmed that he notified Employee of his decision on May 10, 2022. Tr. pg. 46.

Dr. Holman identified Agency's Exhibit 7, at page number 32, as a letter he wrote, signed and sent to Dr. Brian Palmer at the Department of Health on May 10, 2022. He testified that the letter "sets forth the declaration that I am withdrawing my sponsorship of Firefighter [Employee's] ability to practice advanced life support under my medical license." Tr. pgs. 40 – 41.

When asked if protocols are tied to the sponsor or to the jurisdiction, Dr. Holman stated that the protocols are departmental protocols that are not specific to an individual medical director. He explained that "these protocols are approved by the Department of Health, but they are the Fire and EMS Department protocols." When questioned if any other jurisdiction issues an EMT or paramedic license in the city, Dr. Holman asserted that "Yes, some of the inner facility transfers, transfer companies, would have their own medical protocols." Tr. pgs. 52-54.

Dr. Holman asserted he has afforded members the opportunity to take a lesser position such as going from a Paramedic position to a Basic Life Support position after withdrawing his sponsorship. He stated that this practice began sometime after he withdrew his sponsorship for Employee. Tr. pgs. 59-60.

2) Daniel Burke ("Mr. Burke") – Tr. pgs. 63-91

Mr. Burke is the Emergency Medical Services ("EMS") Manager at DOH. He runs the office that regulates the provision of EMS operations, EMS education, and specialty systems of care. Mr. Burke is also a paramedic. He confirmed that he also played a role in medical service provider's certifications. He noted that they have five (5) EMS clinicians. Mr. Burke explained that in the district, "EMS clinicians are required to have a National Registry of Emergency Medical Technicians certification at the level in which they are applying." He asserted that paramedics must be nationally registered paramedics. Mr. Burke

[9] During cross-examination, Dr. Holmes clarified that it was Captain Jared Weinworth and not Cpt. Ca'Merono that attended the meeting he had with Sgt. O'Byrne and Employee. Tr pgs. 46-47.

testified that paramedics are also required to have an approved Basic Life Support ("BLS") and CPR certification from the American Heart Association. He further stated that paramedics are required to have Advance Cardiac Life Support ("ALS") and must have sponsorship and affiliation with an EMS agency and the medical director of that EMS agency. Mr. Burke stated that there are 16 EMS agencies that offer sponsorship to medical service providers in the District. He confirmed that each of these EMS agencies has a director who provides sponsorship. Tr. pgs. 63-65.

Mr. Burke testified that once they receive notification from an EMS agency's medical director that they are withdrawing sponsorship at a certain level of care, they act immediately by revoking that certification based on the sponsorship withdrawal. He asserted that a standard notice of summary revocation document is issued to an individual whose sponsorship is revoked by a medical director. Mr. Burke cited that once he received Dr. Holman's letter indicating that he was withdrawing his sponsorship for Employee, a notice of summary revocation was drafted and transmitted to Employee. Tr. pgs. 67 -69.

Mr. Burke asserted that sponsorship by a medical director is a requirement of certification, thus if the sponsorship is withdrawn, the individual cannot be certified and the only option available is summary revocation. He testified that the notice of summary revocation outlines the individual's due process right which includes five (5) days to respond to the notice and request an appeal with the Office of Administrative Hearings ("OAH"). Tr. pgs. 70-71.

Mr. Burke affirmed that there are instances where a care provider in the District may have multiple sponsorship from multiple care providers. He confirmed that a member could maintain sponsorship with another provider, notwithstanding withdrawal from Agency. Mr. Burke testified that Employee had sponsorship from American Medical Response ("AMR") as a paramedic during the time or shortly after Dr. Holman withdrew his sponsorship of Employee. Tr. pgs. 71-72. Mr. Burke stated that Employee filed an appeal with OAH and Employee's appeal "was dropped after it was found that he had sponsorship from another organization." He cited that after the June 24, 2022, letter, his office interacted with Employee about his certifications at other organizations. Tr. pgs. 72-74.

Referring to the NRE EMT certification general policy which provided that "All D.C. Fire and EMS Department employees will be required to complete the national registry certification process at their respective certification level, EMT B, EMT I99, or EMT P, and maintain both national registry certification and the District of Columbia Department of Health Certification", Mr. Burke affirmed that this policy says nothing about requiring sponsorship from Dr. Holman. Tr. pgs. 74 -75. Referencing Exhibit 4, at page 50, Mr. Burke confirmed that the document says nothing about sponsorship by Dr. Holman. Tr. pg. 76.

Referring to Article 24, section 3, which provides that "EMS provider will carry all required credentials, PAT, drivers' license, CPR and ACLS card, DOH certification card, et cetera, at all times while on duty," Mr. Burke confirmed that while the provision requires certification, it doesn't require sponsorship by Dr. Holman. He also affirmed that the Emergency Medical Services Personnel Certification does not require sponsorship by Dr. Holman. Mr. Burke also confirmed that the paramedic job description requires certification but does not require sponsorship by Dr. Holman. Tr. pgs. 76 – 79. Mr. Burke acknowledged that Employee had a current certification at the time of his appeal of the summary revocation. He stated that following the parties' discussion about Employee's current certification during the conference with the administrative judge, Employee dropped his appeal. Tr. pgs. 79-80.

Mr. Burke also testified that in the District, EMS clinicians are issued a certification for each agency that sponsors them. He noted that in Employee's case, his certification was under American

Medical Response and their medical director, Dr. Kim, was his sponsor. Tr. pgs. 82 – 83. Mr. Burke asserted that an individual cannot maintain certification with an organization that has withdrawn sponsorship, but they can maintain certification with a different organization. Tr. pgs. 83 -84.

According to Mr. Burke, certifications are tied to specific agencies. Thus, if an individual loses a sponsorship at a specific agency, they can continue to maintain sponsorship and affiliation with other agencies, however that certification is only valid for practice under that sponsoring medical director at that sponsoring agency. Mr. Burke confirmed that because Employee lost his sponsorship with Agency, his ability to operate as a paramedic for Agency could not be maintained because Agency's medical director who is responsible for sponsorship at Agency decided not to sponsor Employee, thereby revoking Employee's license to operate as a paramedic with Agency. He averred that Employee could however work for another agency as a paramedic. Tr. pgs. 84-85.

Mr. Burke testified that as of the date of the Trial Board, it was his understanding that Employee was currently certified as a paramedic with another organization, but he did not know what agency. He explained that the DOH issues certifications for each individual agency. He explained that an individual who works for three (3) agencies would hold three (3) physical certifications from each of these agencies. Mr. Burke noted that certifications are not transferrable. Tr. pgs. 88 -89. When asked if there have been instances where the sponsorship was revoked and the sponsor decided to downgrade their medical license to just EMT and reinstate the individual, Mr. Burke said 'Yes'. Tr. pg. 90.

Employee's Case-in-Chief

3) Employee - Tr. pgs. 91-172

Employee had been a Firefighter/Paramedic with Agency since March 2018. He was assigned to Engine 7 and detailed to Logistics at the time of the Trial Board Hearing. Employee asserted that he had eighteen (18) years of experience as a paramedic. Tr. pgs. 91 – 92. Employee noted that he participated in a remediation process in December 2021 based on cases that occurred in July, August and November of 2021, which Agency believed to be suspicious. Tr. pg. 93.

Employee testified that during the December 2021, meeting with Dr. Holman, he was informed that he would ride with an FTO for seven (7) tours. Employee noted that he was not given a written plan at the meeting. Referencing Employee's Exhibit 1, at page 71, Employee averred that the remediation process began during his next tour of duty, which was December 19, 2021, and his final tour was January 16, 2022. Employee noted that he had never gone through a remediation process prior to the current one. He cited that he worked with five (5) different FTOs during this period which was not typical. Employee explained that typically, a member would have one (1) FTO to guide them through the training plan so they can measure their progress over time. Employee testified that switching FTOs four (4) to five (5) times during the remediation process was disadvantageous to him. He confirmed that he had four (4) tours with FTO Davis. Employee explained that his improvement while working with FTO Davis was as result of the consistency of having one (1) FTO. Tr. pgs. 97-98, 101, 102-106, 126-128, 130, 138.

According to Employee, he received the remediation plan on January 16, 2022, after he was notified that he had to do eight (8) and not seven (7) tours for the remediation process. He explained that he emailed Cpt. Weinworth regarding that additional tour and that's when Cpt. Weinworth gave him the remediation plan. Employee cited that he did not have any tour with FTO Nguyen during the remediation process. Employee testified that he had a meeting with Dr. Holman at the end of the remediation process where he was informed that he did not pass his FTO process, and he was detailed to Logistics in January

2022. He asserted that in May 2022, four (4) months after he was detailed to Logistics, he received a letter from Dr. Holman stating that he was removing Employee's sponsorship under his license. Tr. pgs. 106-107, 111-113, 126, 138-140.

Employee testified that in June 2022, he received a letter from DOH stating that they wanted to remove his ability to have a license in D.C. in general. Employee cited that he appealed DOH's decision. Employee affirmed that he was currently certified to work as a paramedic in the District of Columbia. He identified Employee's Exhibit 4, page 42, as a DOH certification for paramedic, Lifestar ambulance, which applies to the District of Columbia. Employee identified page 43 of the same Exhibit as an advanced life support certification that was provided by Agency and with an expiration date of January of 2025. Employee also identified page 44 as another advanced life support certification issued by Agency with a January 2025 expiration date. Employee identified page 45, of the same Exhibit as his CPR certification provided by Agency, with a January 2025, expiration date. Employee identified page 46, of the same Exhibit as his national registry for a paramedic which authorizes him to work anywhere in the nation. He cited that this was valid until March of 2024. Tr. pgs. 113-116.

Employee highlighted that the remediation process was unjustified and unfair because he was assigned to five (5) FTOs with five (5) different personalities, instead of one (1) FTO. Tr. pg. 131-132, 146. Employee testified that he did not refuse to sign any of the daily observation reports, but rather he could not sign the DORs because he lacked access. Employee stated that Sergeant Halle O'Byrne emailed him on his day off requesting that he sign the DORs. He replied to Sergeant Halle O'Byrne that he would sign the DORs upon his return to duty because he did not have the privilege to get into the software unless he was on Agency's computer. Tr pgs. 134 -135. Employee asserted that he was unaware that he had to meet certain numbers or have a DOR to evaluate his performance as these were not discussed in the December 2021, meeting. Tr. pgs. 136-137.

Employee affirmed that while he filed an appeal with OAH challenging DOH's revocation of his certificate, on the day of the OHA hearing, he did not challenge DOH's revocation of his certificate with Agency. Employee stated that his representative at the OAH hearing explained to him that he won the appeal because his DOH card was not completely revoked. Tr. pgs. 143-144. Employee testified that he did not continue his appeal at OAH because he had a certification in D.C. under AMR. He maintained that it was up to the medical director to sponsor him or not and he could not force the medical director to do so because it was his license. Tr. pg. 148.

4) Chazzreno Ca'Merono - Tr. pgs. 172-197

Chazzreno Ca'Merono ("Cpt. Ca'Merono") has been with Agency for fourteen (14) years and he became a Captain at Agency in 2019. Cpt. Ca'Merono is currently EMS supervisor assigned to the 3rd Battalion of full platoon. He stated that he was Employee's FTO when Employee was initially employed with Agency, and he worked with Employee one-on-one. He asserted that he was in the same battalion with Employee, and they worked together a handful of times. Tr. pgs. 173, 184.

Cpt. Ca'Merono testified that when he worked with Employee as his FTO, he found Employee to be prepared for the transition to a new department. He stated that because Employee came from a similar system that he was a little more ahead of the curve than some of the previous students he had. Cpt. Ca'Merono cited that he taught Employee resource delegation, scene management, protocols, and standard operating guidelines within Agency standards. He asserted that Employee was very good at handling multiple personnel on scene in a way that was a little bit more difficult for newer employees and new paramedics to master. He also noted that Employee did not need coaching for his rapport with

patients. He cited that Employee's strengths were appropriate assertiveness and patient rapport. Cpt. Ca'Merono stated that Employee was committed to his job and coachable. He averred that he did not witness any significant issues or concerns with Employee's patient care, and he did not have any disciplinary issues with Employee. Tr. pgs. 174 – 175.

5) Jadonna Sanders - Tr. pgs. 197 -201

Jadonna Sanders ("Sgt. Sanders") is a Sergeant, paramedic with Agency at Truck 8 and has been for almost 23 years as of March of 2024. She became a sergeant in December of 2021. She stated that she has never worked with Employee but she "… agreed to be a witness on the Trial Board because … I found out that there was a few, not just Firefighter [Employee], who was having problems with not just the FTEP[10] program but the training itself. And so I agreed that I would give my opinion as well as experience with the FTEP program." Tr. pgs. 197-199. Sgt. Sanders stated that she worked with one (1) FTO in her time in the FTEP. She noted that working with one (1) FTO "… made me be consistent in my training because various FTOs had different styles of training. And so when you switch between different FTOs, they can have a conflict. And it also can -- you can also be trained differently, which can create a problem in my opinion." Tr. pg. 200.

6) Travis Chase- Tr. pgs. 202 -212

Travis Chase ("Lt. Chase") is a Lieutenant and has been employed with Agency for about 16 years. He is assigned to Engine 7, 3rd Platoon, and he has been a lieutenant since 2021. He asserted that he was Employee's supervisor on Engine 7, 3rd Platoon. Tr. pgs. 202-203. He testified that "My experience with Firefighter [Employee] with basic care was everything seems to run smoothly. He was in control of the scene and making the right decisions. I didn't see anything. I don't recall when I ran with him anything that jumped that I needed to take a step in." Lieutenant Chase stated that Employee's interactions with members of the public was very cordial, pleasant, and he liked to make people laugh. He asserted that Employee had a very positive attitude on the job, he was the go-to guy, and he was reliable. He confirmed that Employee was an asset to the Department. Lt. Chase affirmed that he was aware that Employee was detailed to Logistics because he did not get passing scores in the remediation. He noted that these charges have no impact on his willingness to work with Employee. Lt. Chase stated that if Agency terminated Employee, they would be losing a paramedic asset for the Department Tr. pgs. 203-206. Lt. Chase testified that Employee was under his supervision for approximately six months, and he never had to counsel Employee or write a special report about any incidents during that time. Tr. pgs. 207-208. He cited that Employee was an above average paramedic. Tr. pg. 209.

Panel Findings[11]

The Trial Board Panel made the following findings of fact based on their review of the evidence presented at the hearing:

1) The Panel finds that FF/P [Employee] has violated Order Book Article XXIV, § 3 (**Certification and Credential Requirements**), Bulletin No. 83 (**NREMT Certification Policy**) as well as his Firefighter/Paramedic position description based upon evidence establishing that:

    a. the Department of Health revoked FF/P [Employee's] certification to work as a paramedic for the Department; and

[10] Field Training Evaluation Program.
[11] Agency's Answer, *supra,* at Tab 27.

b. the Office of Administrative Hearings dismissed FF/P [Employee's] appeal with prejudice.

2) The Panel further finds that FF/P [Employee] is non–compliant with:

a. D.C. Official Code § 7–2341.05 (**Emergency Medical Services Personnel: Certification Required**); and

b. D.C. Official Code § 7–2341.15 (**Denial, Suspension, and Revocation of License or Certification**).

3) The Department has established cause by a preponderance of the evidence.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW[12]

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,[13] OEA has a limited role where a departmental hearing has been held. According to *Pinkard*, the D. C. Court of Appeals found that OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The statute gives OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.[14] The Court of Appeals held that:

> "OEA may not substitute its judgment 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."

Additionally, the Court of Appeals found that OEA's broad power to establish its own appellate procedures is limited by Agency's Collective Bargaining Agreement. Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, 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 & Emergency Medical Services Department;
>
> 2. The employee has been subjected to an adverse action;
>
> 3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;

[12] 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").
[12] 801 A.2d 86 (D.C. 2002).
[13] 801 A.2d 86 (D.C. 2002).
[14] *See* D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

> 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 [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; *and*
>
> 5. *At the agency level, Employee appeared before an Adverse Action Panel 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 (emphasis added).

There is no dispute that the current matter falls under the purview of *Pinkard*. Employee is a member of the D.C. Fire and Emergency Medical Services Department and was the subject of an adverse action (termination); and Employee is a member of the International Fire Fighters Local 36, AFL-CIO MWC Union ("Union") which has a Collective Bargaining Agreement ("CBA") with Agency. The CBA contains language similar to that found in *Pinkard* and Employee appeared before an Adverse Action Panel on January 17, 2024, for an evidentiary hearing. This Panel made findings of fact, conclusions of law and recommended that Employee be terminated for the current charges. Consequently, I find that *Pinkard* applies in this matter. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgement for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of (1) whether the Adverse Action Panel's decision was supported by substantial evidence; (2) whether there was harmful procedural error; and (3) whether Agency's action was done in accordance with applicable laws or regulations.

1) Whether the Adverse Action Panel's decision was supported by substantial evidence

Pursuant to *Pinkard*, I must determine whether the Adverse Action Panel's ("Panel") decision was supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[15] If the Panel's findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record to support findings to the contrary.[16]

A Trial Board Hearing was convened on January 17, 2024. The Panel found that:

1) The Panel finds that FF/P [Employee] has violated Order Book Article XXIV, § 3 (**Certification and Credential Requirements**), Bulletin No. 83 (**NREMT Certification Policy**) as well as his Firefighter/Paramedic position description based upon evidence establishing that:

    c. the Department of Health revoked FF/P [Employee's] certification to work as a paramedic for the Department; and

    d. the Office of Administrative Hearings dismissed FF/P [Employee's] appeal with prejudice.

2) The Panel further finds that FF/P [Employee] is non–compliant with:

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[15] *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).
[16] *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987).

a. D.C. Official Code § 7–2341.05 (**Emergency Medical Services Personnel: Certification Required**); and

b. D.C. Official Code § 7–2341.15 (**Denial, Suspension, and Revocation of License or Certification**).

3) The Department has established cause by a preponderance of the evidence.

Pursuant to the record, it is undisputed that DOH revoked Employee's certification to work as a paramedic for Agency and that the OAH dismissed Employee's appeal in this matter with prejudice.[17] Mr. Burke confirmed that because Employee lost his sponsorship with Agency, DOH revoked Employee's license to operate as a paramedic with Agency.[18] Tr. pgs. 84-85. Further, D.C. Official Code § 7–2341.05(a) provides in pertinent parts that, "… no person shall perform the duties of emergency medical services personnel in the District, whether for compensation or not for compensation, without first having obtained a certification from the Mayor to do so."[19] Pursuant to Mr. Burke's testimony, following Dr. Holman's withdrawal of sponsorship, DOH revoked Employee's license to operate as a paramedic with Agency, thereby, making him non-compliant with D.C. Official Code § 7–2341.05. I also find that Employee was non-compliant with D.C. Official Code § 7–2341.15, because his license to operate as a paramedic for Agency was revoked. Accordingly, I find that the Panel met its burden of substantial evidence to terminate Employee.

2) Whether there was harmful procedural error

Employee averred that the Initial Written Notice ("IWN") of Proposed Adverse Action for the current matter was untimely, and in violation of the Collective Bargaining Agreement ("CBA") between Agency and Employee's Union.[20] Employee argued that by failing to dismiss the current adverse action for untimeliness, he was prejudiced and not treated like other employees who had their cases dismissed for being untimely.[21] Employee further argued that Agency cited to the outdated 2012 District Personnel Manual ("DPM"). He stated that pursuant to the CBA between Agency and Employee's Union, Agency is bound by the most recent DPM version and any reference to the 2012 version should not be applicable to the current matter.[22]

Agency argued that, regardless of when the IWN was issued, its alleged failure to timely issue the IWN is harmless procedural error because Employee was not prejudiced or harmed by the alleged

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[17] *See* Agency's Answer, *supra*, at Tab 8.
[18] *Id*. at Tab 7.
[19] The Mayor delegated this authority to the Director of the Department of Health. Specifically, Mayor's Order 2009-89, June 1, 2009, provides as follows:
1. The Director of the Department of Health is delegated the authority vested in the Mayor to:
   A. Establish licensing and certification requirements, and issue licenses and certifications, pursuant to Sections 4,5,6,7,8,9, II, 13, and 15 of the Act.
   B. Issue rules to implement the Act, pursuant to Sections 24 and 10(e) of the Act.
   C. Conduct inspections, evaluations, and investigations pursuant to Section 14 of the Act.
   D. Enforce violations of the Act, pursuant to Sections 16, 17, 18, and 25(c) of the Act.
   E. Establish and maintain a trauma care system pursuant to Section 20 of the Act.
   F. Establish a program of emergency medical services for children pursuant to Section 22 of the Act."
2. The Director of the Department of Health is authorized to make sub-delegations as necessary to carty out the provisions of the Act.

[20] *See* Employee's Rebuttal/Response to DCFEMS (August 14, 2024).
[21] *Id*. *See. also* Agency's Answer at Tabs 15, and 21.
[22] Employee's Rebuttal/Response to DCFEMS, *supra*.

defect.[23] Agency contended that pursuant to Article 31, Section (B)(1) of the CBA between Agency and Employee's union, the trigger date was November 4, 2022, not July 7, 2022, as Employee asserted. Agency also asserted that Article 31, Section (B)(1) of the CBA is directory because there is no express consequence for failing to meet any deadline in Article 31, Section (B)(1) of the CBA.[24] Agency averred that Employee's removal was not based on any DPM violation, but rather for his violation of D.C. Official Code §§ 7–2341.05 and .15; Order Book Article XXIV, § 3, Bulletin No. 83 and failure to maintain a certification and licensure required by his position description.[25] Agency argued that the DPM was only cited to provide Employee with additional information. It also noted that the Trial Board Panel did not rely on a finding that Employee violated the 2012 or the current DPM.[26]

Article 31, Section (B)(1) of the CBA

Employee argued that the IWN was untimely, in violation of Article 31, Section (B)(1) of the CBA between Employee's Union and Agency. In *Brown v. Watts*, 933 A.2d 529 (April 15, 2010), the Court of Appeals held that OEA is not jurisdictionally barred from considering claims that a termination violated the express terms of an applicable collective bargaining agreement. The court explained that the Comprehensive Merit Personnel Act ("CMPA") gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including "matters covered under subchapter [D.C. Code §1-616] that also fall within the coverage of a negotiated grievance procedure."[27] In this case, Employee was a member of a Union when he was terminated and governed by Agency's CBA with the Union. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between Employee's Union and FEMS as it relates to this adverse action.

Pursuant to Article 31, Section (B)(1) of the CBA between Employee's Union and Agency,

> An employee shall be notified of the alleged infraction or complaint filed against him/her in writing within seventy-five (75) days after the alleged infraction or complaint or such time as the employee becomes aware of the alleged infraction or complaint. This notification shall be referred to as the "Initial Written Notification."

Based on the record, the OAH dismissed Employee's appeal of his license revocation on July 7, 2022. Agency argued that the matter was pending with OAH until November 4, 2022, however, Agency does not state the reason for this assertion. Furthermore, even assuming that the trigger date was November 4, 2022, I find that Agency still violated this CBA provision because seventy-five (75) days from November 4, 2022, is January 17, 2023. Agency issued the IWN to Employee on June 16, 2023, 225 days from the November 4, 2022, alleged trigger date. Therefore, I conclude that Agency violated Article 31, Section (B)(1) of the CBA between Employee's Union and Agency because it commenced the current cause of action more than seventy-five (75) days required by Article 31, Section (B)(1) of the CBA.

While Article 31 section B (1) of the CBA was a bargained-for provision that Agency and the Union negotiated, the OEA Board and the Courts have held that, where there is no specific consequence

[23] Agency's Answer, *supra*.
[24] Agency's Brief (July 8, 2024).
[25] *Id*.
[26] *Id*.
[27] Pursuant to D.C. Code § 1-616.52(d), "[a]ny system of grievance resolution or review of adverse actions negotiated between the District and a labor organization *shall take precedence* over the procedures of this subchapter for employees in a bargaining unit represented by the labor organization" (emphasis added).

to an agency's violation of a time limit, the time limit is construed to be directory in nature.[28] The OEA Board in *Quamina*, *supra*, cited to *Teamsters Local Union 1714 v. Pub. Employee Relations Bd*., 579 A.2d 706, 710 (D.C. 1990), wherein, the D.C. Court of Appeals held that "[t]he general rule is that [a] statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision. In *Watkins v. Department of Youth Rehabilitation Services*,[29] this Board adopted the reasoning provided in Teamsters when examining a forty-five-day regulation which also addressed the time limit in which an agency was required to issue a final decision in cases of summary removal. The Board in *Watkins* noted that the personnel regulation regarding the forty-five-day rule did not specify a consequence for the agency's failure to comply; therefore, the regulation was construed to be directory in nature.[30] Unlike a mandatory provision, a directory provision requires a balancing test to determine whether any prejudice to a party caused by agency delay is outweighed by the interest of another party or the public in allowing the agency to act after the statutory time period has elapsed."[31]

Here, although Article 31 section B (1) provides a clear time limit for when to issue an IWN, it does not provide a consequence for failing to strictly adhere to this provision. Consequently, I find that, Agency correctly asserted that the CBA language of Article 31 section B (1) is directory, rather than mandatory in nature. When weighed against the prejudice to Employee, it is clear that the public interest in adjudicating this matter on its merits outweighs Agency's procedural delays.[32] Moreover, Employee has not shown that he was prejudiced by Agency's delay in issuing the IWN. Accordingly, the undersigned agrees with Agency's assertion that Agency's failure to comply with the above referenced CBA section is harmless error.

OEA Rule 631.3 provides that, "[n]otwithstanding 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: 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."

Moreover, the OEA Board in *Quamina*, addressed this issue of harmless error. It noted that "… an agency's violation of a statutory procedural requirement does not necessarily invalidate the agency's adverse action. Thus, the facts in this matter warrant the invocation of a harmless error review. In determining whether Agency has committed a procedural offense as to warrant the reversal of its adverse action, this Board will apply a two-prong analysis: whether Agency's error caused substantial harm or prejudice to Employee's rights *and* whether such error significantly affected Agency's final decision to

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[28] *See Rodriguez v. District of Columbia Office of Employee Appeals*, 145 A.3d 1005 (D.C. 2016). Although the CBA provision at issue in *Rodriguez*, as well as the outcome of *Rodriguez* are different from that of the current matter, the D.C. Court of Appeals in *Rodriguez* echoed the premise that a violation of a time limit CBA provision that does not provide a specific consequence to an agency's violation of a time limit is considered harmless error. The Court in *Rodriguez* noted that *"[w]e also can agree that application of harmless error review might warrant a ruling in favor of the Agency if Article 24, Section 2.2 of the CBA provided only that the Union was to be notified in writing within forty-five days "after the date that the Employer knew or should have known of the act or occurrence[,]" without specifying any consequence of the failure to give the requisite notice*." (Emphasis added).

[29] OEA Matter No. 1601-0093-10, Opinion and Order on Petition for Review (January 25, 2010).

[30] In distinguishing mandatory statutory language from directory language, the Board in *Watkins* highlighted the *holding in Metropolitan Police Department v. Public Employee Relations Board,* 1993 WL 761156 (D.C. Super. Ct. August 9, 1993), wherein the Court found statutory language mandatory, not directory, where it provided that no adverse action shall be commenced 45 days after an agency knew or should have known of the act constituting the charge.

[31] *See JGB Property v. D.C. Office of Human Rights,* 364 A.2d 1183 (D.C. 1976); and *Brown v. D.C. Public Relations Board,* 19 A.3d 351 (D.C. 2011). See also *Quamina*, *supra*.

[32] *Watkins at 5.*

suspend Employee."[33] In applying this two-prong analysis to the current matter, the undersigned finds that Agency's failure to issue the IWN within seventy-five (75) days after the infraction or complaint became final did not cause substantial harm or prejudice to Employee. Employee continued working with Agency after the OAH's decision on his appeal regarding the revocation of his paramedic license with Agency. A Trial Board hearing was convened thereafter, wherein, Employee was provided with the opportunity to present evidence in support of his position. Further, the delay in issuing the IWN did not affect Agency's decision to terminate Employee. Therefore, I conclude that Agency's failure to comply with the seventy-five (75) days requirement did not significantly affect Agency's decision to terminate Employee. Accordingly, I further conclude that Agency's failure to comply with the seventy-five (75) days requirement as provided in the CBA is harmless error.

DPM Version

Employee argued that Agency cited to the outdated 2012 DPM. He explained that Agency is bound by the most recent DPM version and any reference to the 2012 version should not be applicable to the current matter. Agency argued that the Trial Board did not rely on a finding that Employee violated the 2012 or the current DPM; rather, the DPM was only cited to provide Employee with additional information.

In its statement of charges, Agency cited that Employee's removal was based on his violation of D.C. Official Code §§ 7–2341.05 and .15; Order Book Article XXIV, § 3, Bulletin No. 83 and failure to maintain a certification and licensure required by his position description. Agency also cited in the Statement of Charges that "This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department 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." See also *16 DPM § 1603.3(f)(3)* (rev. 08/27/2012); see also *16 DPM § 1605.4(e)* (rev. 06/12/2019). (Emphasis added).

The undersigned finds that the 2019, and not the 2012, DPM is the applicable DPM version in the instant matter. Employee's paramedic license was revoked in 2022; he was terminated effective March 9, 2024, and the current version of the DPM was already in effect. Agency charged Employee with Neglect of duty and cited to both the 2012 and 2019 versions of the DPM. Because the charge of Neglect of Duty is found in both the 2012 and 2019 DPM version, I find that Agency's mention of the 2012 DPM version in the Statement of Charges is harmless error.

3) Whether Agency's action was in accordance with law or applicable regulation

Employee was charged with Neglect of Duty under Charges No. 1, Specification No. 1., for his failure to maintain the required paramedic certification in compliance with District rules, regulations and the requirements of Employee's position description. Employee argued that Agency's policy "simply states that a member must maintain a valid DC DOH card while employed with the agency. [Employee] did just that. At no point did Firefighter/Paramedic [Employee] have any lapses for any period of time with his DC DOH licensure."[34] Pursuant to the record, Dr. Holman withdrew his sponsorship of Employee's paramedic certificate in 2022. Upon notification of Dr. Holman's decision to withdraw his sponsorship, the DOH issued a Notice of Summary Revocation to Employee notifying him that his paramedic license will be revoked. Employee was provided an opportunity to appeal this decision with

[33] *Quamina*, *supra*.
[34] Employee's Rebuttal/Response to DCFEMS, *supra*.

the OAH, which he did. On July 7, 2022, the OAH ALJ issued a decision dismissing Employee's appeal with prejudice. The OAH ALJ cited that:

> At the Status Conference, the parties discussed the fact that the certification that was at issue in the Notice has since expired. The parties also discussed the fact that [Employee's] certification is current, and he is, at this time, being sponsored while employed by American Medical Response. [Employee] advised that he no longer wished to pursue an appeal of the Notice. As a result of [Employee's] assertion, the Department of Health set forth a Motion to Dismiss this matter. [Employee] had no objection, and the motion is hereby granted.[35]

Mr. Burke affirmed that a care provider in the District may have multiple sponsorship from multiple care providers and a member could maintain sponsorship with another provider, notwithstanding withdrawal from Agency. Mr. Burke testified that Employee had sponsorship from American Medical Response as a paramedic during the time or shortly after Dr. Holman withdrew his sponsorship of Employee. Tr. pgs. 71-72.

While it is undisputed that Employee maintained a valid D.C. DOH paramedic certification from another District care provider after Dr. Holman withdrew his sponsorship of Employee's paramedic certification, Mr. Burke also testified that because Employee lost his sponsorship with Agency, *DOH revoked Employee's license to operate as a paramedic with Agency* (emphasis added). Additionally, Mr. Burke explained that in the district, EMS clinicians are issued a certification for *each agency that sponsors them* (emphasis added). Tr. pgs. 82 – 83. Mr. Burke asserted that *an individual cannot maintain certification with an organization that has withdrawn sponsorship*, but they can maintain certification with a different organization (emphasis added). Tr. pgs. 83 -84.

Furthermore, Mr. Burke asserted that *certifications are tied to specific agencies*. Thus, *if an individual loses a sponsorship at a specific agency, they can continue to maintain sponsorship and affiliation with other agencies*, because the certification is only valid for practice under that sponsoring medical director at that sponsoring agency. (Emphasis added). Mr. Burke confirmed that because Employee lost his sponsorship with Agency, his ability to operate as a paramedic for Agency cannot be maintained because Agency's medical director who is responsible for sponsorship at Agency decided not to sponsor Employee. Thereby, this action revoked Employee's license to operate as a paramedic with Agency. Tr. pgs. 84-85. Dr. Holman explained that he withdrew his sponsorship because "… it was determined that [Employee] could not provide good patient care that was safe." Tr. pgs. 38-40.

Furthermore, pursuant to Employee's Position Description, under subheading Licensing/Certification, Employee is required to hold and maintain a paramedic certification.[36] Because Dr. Holman withdrew his sponsorship of Employee's paramedic certification and the DOH revoked Employee's license to operate as a paramedic for Agency, I find that Employee neglected his duty when he failed to maintain a paramedic certification with Agency. Consequently, I conclude that Agency has met its burden of proof in this matter.

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[35] Agency Answer, *supra*, at Tab 8.
[36] *Id*. at Tab 6.

Whether the Penalty was Appropriate

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[37] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Illustrative Actions ("TIA"); whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. In this case, there exists substantial evidence to discipline Employee for Charge No. 1 – Neglect of Duty.

Penalty Based on Consideration of Relevant Factors

An Agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.[38] The relevant factors are generally outlined in *Douglas v. Veterans Administration*.[39] The evidence does not establish that the penalty of termination for Neglect of Duty constituted an abuse of discretion. The penalty for a first offense of Neglect of Duty under the 2019 DPM versions ranges from counseling to removal. In *Douglas*, the court held that "certain misconduct may warrant removal in the first instance." Here, Agency has presented evidence that it considered relevant factors as outlined in *Douglas,* in reaching its decision to terminate Employee.[40] The penalty of termination was within the range allowed for a first offense. Therefore, I find that Agency's action should be upheld.

ORDER

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

FOR THE OFFICE:

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

[37] *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).

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

[39] 5 M.S.P.R. 313 (1981).

[40] Agency's Brief, *supra*, at Tab 17.