THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0036-25
Employee	)	
	)	Date of Issuance: January 6, 2026
v.	)	
	)	JOSEPH E. LIM, ESQ.
METROPOLITAN POLICE DEPARTMENT,	)	SENIOR ADMINISTRATIVE JUDGE
Agency	)	

Dan McCartin, Esq., Employee Representative
Michele McGee, Esq. Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") on April 29, 2025, challenging the Metropolitan Police Department's ("Agency" or "MPD") decision to terminate him based on allegations of criminal activity. Employee's position of record was Police Officer. In response to OEA's April 29, 2025, letter, Agency filed its Answer on May 19, 2025. This matter was assigned to the undersigned judge on May 28, 2025.

A Prehearing Conference was held on July 10, 2025. A Post Conference Order was issued the same day, requiring the parties to submit legal briefs addressing the issues in this matter. Both parties submitted their briefs accordingly. Because this matter is being reviewed under the analysis set forth in *Pinkard v. D.C. Metropolitan Police Department*[1], no Evidentiary Hearing was convened. The record is now closed.

JURISDICTION

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

[1] 801 A.2d 86 (D.C. 2002).

ISSUES

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.

UNCONTROVERTED FACTS[2]

Employee was formerly employed by MPD as a Police Officer. On the night of January 31, 2024, into the morning of February 1, 2024, Employee was working the midnight tour and assigned to a patrol area in the 4th District. Employee was working without a partner, wearing a full uniform (including his holstered service pistol), and driving an MPD marked cruiser. Employee was assigned a body-worn camera ("BWC") for his shift.

The facts that occurred on February 1, 2024, were covered during the March 12, 2024, Adverse Action Panel ("AAP") hearing. A civilian identified as "Complainant A"[3] reported that Employee coerced her into sex in the back of Employee's patrol car while wearing his police uniform and gun. Both Maryland and District of Columbia police authorities investigated the allegations.

No criminal charges were filed against Employee, but Complainant A sought a Temporary Protective Order. In seeking a Temporary Protective Order, Complainant A testified before the Montgomery County District Court ("MCDC"). The MCDC found that reasonable grounds existed to believe that Employee committed rape or another statutory sexual offense and issued a Temporary Protective Order ("TPO"). On March 1, 2024, a Final Protective Order ("FPO") was issued for one (1) year.[4] The Final Protective Order required Employee to surrender all firearms and refrain from possessing any firearm while the Final Protective Order was in effect.

On July 2, 2024, MPD served Employee with a Notice of Adverse Action (Notice).[5] In the Notice, MPD levied five (5) charges against Employee. The first charge was engaging in conduct that constitutes a crime in violation of MPD General Order 120.21, Attachment A, 6, and contained two (2) specifications: (1) that Employee engaged in the crime of indecent exposure by willfully exposing his penis in a public place while having vaginal intercourse with Complainant A; and (2) that he engaged in the crime of littering because after having vaginal intercourse, Employee discarded the used condom on the ground.

The second charge, conduct unbecoming, included three (3) specifications.[6] The first

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[2] Facts from official documents submitted and undisputed by the parties.
[3] To protect her identity, the complainant is identified by her last initial, A.
[4] Agency Answer, Tab 4, Exhibit 7.
[5] Agency Answer, Tab 2.
[6] General Order 120.21, Attachment A, 11, prohibits "[c]onduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform

specification stated that Employee left the District and entered Maryland on February 1, 2024, while on duty without permission from an MPD official. The second specification stated that while on duty and in Maryland, Employee had sexual intercourse in his marked MPD cruiser. The third specification stated that a Montgomery County Judge found reasonable grounds to believe that Employee committed rape or a statutory sexual offense and that a Final Protective Order was issued, which prohibited him from possessing any firearms and therefore made him ineligible to perform police duties.

The third charge, neglect of duty, had one (1) specification which alleged that Employe neglected his duties of patrolling his assigned area when he left the District and went to Maryland.

The fourth charge, failure to obey orders and directives, included seven (7) specifications.[7] The first specification stated that Employee engaged in sex acts in his MPD cruiser in a public place in violation of MPD General Order 201.26, which mandates that members not engage in indecent or lewd acts. The second Specification stated that Employee failed to notify the Dispatcher that he entered Maryland in violation of MPD General Order 201.26, which requires officers to keep the Dispatcher advised of their locations at all times. The third specification stated that Employee left the District while on duty and without approval in violation of MPD General Order 201.26. The fourth specification stated that Employee initially logged off his MDT while in Maryland to avoid assignments from the MPD Dispatcher, which violated MPD General Order 302.09. The fifth specification alleged that Employee removed his duty belt and firearm, placed them on the front seat, and then got into the backseat of his MPD cruiser to engage in sex acts, violating MPD General Order 901.01. The sixth specification stated the Employee failed to activate his BWC when contacting Complainant A about her using high beam headlights, which violated MPD General Order 302.13. The seventh specification stated that Employee removed his ballistic vest with BWC before getting into the backseat of his cruiser in violation of MPD General Order 302.13, which mandates that a BWC be worn for the entire shift.

The fifth charge, conduct detrimental, included three (3) specifications.[8] The first specification stated that the MCP investigated Employee for the crime of sexual assault. The second specification stated that following the rape allegation, multiple news outlets published articles about the MCP investigation, which brought discredit to MPD. The third specification stated that during the Temporary Protective Order hearing, the Court found reasonable grounds to believe that Employee committed rape and that a Final Protective Order was issued prohibiting Employee from possessing firearms.

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effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia."

[7] General Order 120.21, Attachment A, 16, provides that MPD may discipline officers for failing "to Obey Orders and Directives issued by the Chief of Police."

[8] An officer violates General Order 120.21, Attachment A, 24, and is subject to discipline when the officer engages in "[a]ny conduct not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."

An Adverse Action Hearing ("Hearing") was held on January 3, 2025.[9] Employee pled guilty to Charge No. 2, Specification Nos. 1 and 2; Charge No. 3, Specification No. 1; and Charge No. 4, Specification Nos. 1-4 and 7. Employee pled not guilty to the remaining Charges and Specifications. Agent Jewell and MCP Seargeant Jason Bahm testified on behalf of MPD at the Hearing. Employee did not testify, nor did he present any witnesses.

Following the Hearing, the Adverse Action Panel ("AAP") issued its Findings of Fact and Conclusions of Law recommending Employee's termination.[10] The Panel found Employee guilty of all Charges and Specifications except for Charge No. 4, Specification No. 6-failure to obey orders and directives by not activating his BWC. After examining each of the *Douglas* factors,[11] the Panel recommended the penalty of termination for all Charges and Specifications except Charge No. 4, Specification No. 6.

On February 10, 2025, MPD served the Findings of Fact and Conclusions of Law on Employee through counsel. On March 4, 2025, Employee, through counsel, wrote to the Chief of Police appealing the Panel's Findings of Fact and Conclusions of Law.[12] On April 1, 2025, the Chief of Police denied Employee's appeal and issued MPD's Final Decision in this matter. The Chief of Police found that Employee admitted to the much of the misconduct, sufficient evidence was presented to sustain the Charges, and the Panel applied the *Douglas* factors correctly. The Chief of Police also found that Employee's misconduct was grave and represented a gross abuse of Employee's authority as a police officer.[13] This appeal to OEA followed on April 29, 2025.

SUMMARY OF RELEVANT AAP EVIDENCE[14]

On March 12, 2024, Agency held an AAP Disciplinary Hearing. The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of Employee's proceeding. Both Agency and Employee presented documentary and testimonial evidence during the course of the hearing to support their position.

Around 2:00 a.m. on February 1, 2024, Employee was driving on Georgia Avenue, NW and encountered Complainant A, who was driving a separate vehicle on Georgia Avenue, NW. Both Employee and Complainant A came to a stop, side by side, at a red light. Both rolled down their windows and started talking. Employee and Complainant A did not know each other prior to this encounter. They continued to talk at each red light as they proceeded down Georgia Avenue, NW. During their conversation, Employee asked Complainant A where she was going and told her that she was operating her vehicle with its high beams illuminated.[15] At 2:34 a.m., Employee turned off the Mobile Data Terminal ("MDT"), an in-car computer which allows MPD to communicate with and monitor members vehicle-to-vehicle- in

[9] Agency Answer, Tab 6 and 7.
[10] Agency Answer, Tab 7.
[11] *Douglas v. Veterans Admin.,* 5 M.S.P.R. 280 (1981).
[12] Agency Answer, Tab 8.
[13] Agency Answer, Tab 9.
[14] Agency Answer, Tab 6. AAP Hearing Transcript, March 12, 2024. Tab 6 is the transcript from the Adverse Action Hearing. Citations to the transcript are cited by page and line number.
[15] Agency Answer, Tab 6, 24:21-25:7.

violation of MPD General Order 302.09, which requires that the MDT remain powered on and logged in to MPD systems for the duration of a shift.[16]

One (1) minute later, Employee violated MPD General Order 201.26 when he drove out of the District and into Silver Spring, Maryland. Employee had no lawful reason to leave the District and did not seek supervisory approval to leave the District.[17] Employee and Complainant A drove to Ellsworth Park in Silver Spring, Maryland.[18] Complainant A exited her vehicle and entered the back seat of Employee's MPD vehicle.[19] Employee then removed his ballistic vest and BWC, placing them on the front seat of his MPD vehicle. In addition, Employee removed his duty belt containing his holstered service pistol and placed it on the front passenger seat.[20]

Employee had a backpack/book bag on the front seat of his car and took a condom out of the bag. Employee had oral and vaginal sex with Complainant A in the back of his MPD vehicle.[21] Afterward, Employee put his phone number into Complainant A's phone and they both left the area.[22]

At 3:08 a.m., a traffic camera captured Employee driving at a high rate of speed on Georgia Avenue, NW entering the District from Maryland. Four (4) minutes later, Employee turned his MDT on.[23] After leaving Ellsworth Park in Maryland, Complainant A called and texted Employee and Employee called Complainant A. All calls and texts occurred within a few minutes of leaving Ellsworth Park. Neither Employee nor Complainant A responded to the calls and text messages.[24]

Subsequently, Complainant A's mother called the Montgomery County Emergency Operations Center and reported that Complainant A was sexually assaulted. Montgomery County Police ("MCP") investigated. Complainant A gave a statement to MCP detectives and participated in a sexual assault forensic examination. MCP used the phone number Employee gave to Complainant A to search Linkedin[25] and located a photograph of Employee. This photograph was shown to Complainant A and she identified Employee as the person who sexually assaulted her.

MCP contacted MPD's Internal Affairs Division (IAD) and reported an allegation of misconduct against Employee. IAD searched for Employee in the MPD personnel database and identified Employee's tour and assignment. On February 1, 2024, Employee was served with a PD Form 77 revoking his police powers and placing him on administrative leave. Also on February 1, 2024, MCP seized the MPD vehicle assigned to Employee, his uniform, and

[16] Agency Answer, Tab 6, 42:15-43:10.
[17] Agency Answer, Tab 6, 49:1-13, 55:18-21.
[18] Agency Answer, Tab 6, 46:9-14.
[19] Agency Answer, Tab 6, 26:12-27:3.
[20] Agency Answer, Tab 6, 27:7-15.
[21] Agency Answer, Tab 6, 27:7-29:10, 33:14-35:14.
[22] Agency Answer, Tab 6, 32:18-21, 37:9-11.
[23] Agency Answer, Tab 6, 99:4-11.
[24] Agency Answer, Tab 6, 50:21-51:6, 67:15-68:7.
[25] An American business and employment-oriented social networking service.

equipment. MCP held Employee's MPD vehicle until February 13, 2024, taking the vehicle out of service for the duration of that time.[26]

Employee gave a statement to MCP after he was placed on administrative leave on February 1, 2024.[27] Employee described the sexual encounter as voluntary and initiated by Complainant A. Employee told MCP that Complainant A performed oral sex on him, vomited, and then turned around and pulled down her pants. It was then that Employee used the condom and had vaginal sex with Complainant A. Employee admitted to MCP that he turned off his MDT and stated it was because he was far from his designated patrol area and did not want to be assigned any calls to service.

IAD assigned Agent Jewell to investigate the matter. Agent Jewell interviewed Employee on March 14, 2024. Employee made similar admissions to Agent Jewell that he did to MCP-namely, that he left the District without permission or a law enforcement reason, turned off his MDT, went to a secluded area, allowed Complainant A into the backseat of his MPD vehicle, removed his ballistic vest, removed his BWC, removed his duty belt, got into the backseat, and had oral and vaginal sex with Complainant A.[28] While giving his statements to MCP Employee admitted that after having vaginal sex with Complainant A, he discarded the condom on the ground outside of the car.

On June 12, 2024, Complainant A gave a recorded statement to Agent Jewell.[29] Complainant A told Agent Jewell that while she was driving on Georgia Avenue, NW, near the 4th District Police Station, she encountered Employee while they were at a red light and Employee initiated conversation. At one of the lights, Employee asked to come home with Complainant A, but she told him that she lived with her parents. After driving into Silver Spring, Maryland and while at a red light, Complainant A said that Employee parked behind her and exited his vehicle. Employee informed Complainant A that her high beams were on and then told Complainant A to follow him down the street. Complainant A told Agent Jewell that she was scared and followed Employee out of fear. Employee directed Complainant A to follow him to his MPD cruiser and got into the backseat with her. Per Complainant A, Employee had a gun on his waistband. He removed his pants, exposed his penis, put on a condom, and had vaginal sex with her without her consent. After the encounter, Complainant A went back to her car and saw Employee's MPD cruiser leaving quickly with no headlights on.

On June 13, 2024, Employee gave a supplemental statement to Agent Jewell. He admitted to grabbing and sucking Complainant A's breasts while she was performing oral sex on him. He also admitted to placing his hands around A's neck while having vaginal sex with her during the sex act.

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[26] Agency Answer, Tab 6, 20:14-22, 49:16-22, 86:1-6.
[27] Agency Answer, Tab 6, 63:21-64:2, 86:7-91:18.
[28] Agency Answer, Tab 6, 31:11-37:21.
[29] Agency Answer, Tab 1; Agency Answer, Tab 4; Agency Answer, Tab 6, 23:8-24: 4

ANALYSIS, AND CONCLUSIONS OF LAW

Pursuant to the *Pinkard* analysis,[30] 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 at the Panel Hearing, 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;
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> 2. The employee has been subjected to an adverse action;
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> 3. The employee is a member of a bargaining unit covered by a Collective Bargaining Agreement;
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> 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., Trial Board Hearing] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; and
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> 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.[31]

Based on the documents of record and the position of the parties as stated during the Prehearing Conference, I find that the aforementioned criterion is met in the instant matter. Therefore, my review is limited to the issues as set forth in the "Issues" section of this Initial Decision. Further, according to *Pinkard*, I must generally defer to the [Trial Board's] credibility determinations when making my decision.[32]

Whether the Trial Board's decision was supported by substantial evidence.

Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[33] If the [Trial Board's] findings are supported by substantial evidence, I must accept them even if there is substantial evidence in the record to support contrary findings.[34]

Agency states that the Panel's findings of fact are backed by substantial evidence and its credibility determinations. Agency insists that its Panel's findings and Employee's own

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[30] *Metropolitan Police Department v. Pinkard*, 801 A.2d 86 (D.C. 2002).
[31] *Id*.
[32] *Id*.
[33] *Black's Law Dictionary*, Eighth Edition; *Hutchinson v. District of Columbia Office of Employee Appeals*, 710 A.2d 227, 230 (D.C.1998); *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).
[34] *See Metropolitan Police Department v. Baker*, 564 A.2d 1155 (D.C. 1989).

admissions, that Employee engaged in conduct that constitute a crime, neglect of duty, failure to obey Agency orders and directives, conduct detrimental to the reputation of Agency, and conduct unbecoming an officer, were proven by a preponderance of the evidence at the hearing.

Employee argues that Agency's action should not be upheld because it was not supported by substantial evidence. To support his position against the first charge, Employee pointed out that the Montgomery County Maryland authorities declined to criminally prosecute his acts of indecent exposure or littering and that there were no witnesses apart from Complainant A to these acts. With regard to Charge 2, Employee argues that he fully complied with the protective order by Complainant A against him. Regarding the fifth charge that his actions were detrimental to the Agency, Employee again stresses that no criminal charges against him were filed and that he has no control over what the media publishes about his actions. Employee did not argue against charges 3 and 4.

Based on the record, it is evident that the AAP unanimously concluded by a preponderance of the evidence that he had engaged in an act which would constitute a crime, whether or not a court record reflects a conviction, specifically, sexually assaulting a civilian while he was still on duty on February 1, 2024. The AAP also found by a preponderance of the evidence that Employee was guilty of all charges and recommended the penalty of termination for all charges. The evidentiary record, plus Employee's own admissions, amply supports the Panel's fact findings.

Pursuant to the hearing, the AAP issued its Findings of Fact and Conclusions of Law (Findings).[35] In the Findings, the Panel first set forth a detailed summary of the testimony of all of the witnesses. The Panel then set forth forty-one specific findings coupled with Employee's own admissions that were the basis of its unanimous decision that Employee was guilty of all charges and specifications except for specification 6 of charge 4 set forth in Agency's Notice of Proposed Adverse Action. The Panel's findings clearly showed that it made reasoned credibility assessments of Employee and the other witnesses.

In reviewing an administrative decision's findings of facts, great deference is given to "any credibility determinations of the administrative factfinder."[36] An administrative factfinder's credibility determinations are entitled to greater weight because the examiner has heard the live testimony and observed the demeanor of the witnesses.[37] Although the words spoken can be reviewed in the transcript, the demeanor of the witness cannot be captured.[38]

The District of Columbia Court of Appeals has emphasized the importance of credibility evaluations by the individual who sees the witness "first-hand."[39] Such "first-hand" credibility evaluations are paramount in cases where, as here, witness accounts are essential to the final determination. Even if the administrative factfinder does not directly state in the decision that he

[35] Employee's Appeal, Attachment 4.
[36] *Metro. Police Dep't v. Baker*, 564 A.2d 1155, 1159 (D.C. 1989) (*citation omitted*).
[37] *Dell v. Dep't of Employment Servs*., 499 A.2d 102, 106 (D.C. 1985); *Hillen v. Dep't of the Army*, 35 M.S.P.R. 453, 458 (1987) (recognizing that in trying to resolve issues of credibility, the demeanor of the witness is considered).
[38] *See, e.g., Universal Camera Corp. v. NLRB*, 340 U.S. 474, 496 (1951).
[39] *Stevens Chevrolet Inc. v. Comm'n on Human Rights*, 498 A.2d 546, 549-50 (D.C. 1985).

or she is crediting one witness's testimony over the other, it can be inferred from the findings of fact.[40] (noting that "[a]lthough the appeals examiner summarized the testimony of all the witnesses, it is readily apparent that he substantially credited [one party's] version of the events" by the examiner's summary of the events). Administrative factual findings of disputed facts based on credibility determinations may only be rejected if they are not supported by substantial evidence.[41]

The Panel had the opportunity to observe the witnesses' demeanor while testifying and to thereby assess their credibility. In that regard, the Panel did not find Employee to be credible and the credibility finding of the Panel should not be disturbed. OEA "must generally defer to the [MPD's] credibility findings."[42]

The charges and specifications against Employee were based on the undisputed fact that Employee was charged with sexual assault based on his victim's account of the incident. The record of evidence clearly shows Employee being involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction. Employee did not deny that he disobeyed MPD orders and directives. Nor does he deny that news accounts of his actions portrayed MPD in a bad light. Such conduct is clearly evidence of conduct unbecoming an officer, including acts detrimental to good discipline, and conduct that would be a violation of law.

My examination of the record leads me to conclude that the Panel's credibility determinations are based upon substantial evidence. If the Panel's findings are supported by substantial evidence, I must accept them even if there is substantial evidence in the record to support contrary findings. Therefore, I am compelled to accept the Panel's credibility findings. In summary, I find that there is substantial evidence to support all of Agency's charges against Employee.

Whether there was harmful procedural error.

Because Employee does not argue that Agency committed any procedural errors, I find that there was no harmful procedural error in this matter.

Whether Agency's action was done in accordance with applicable laws or regulations.

Employee asserts that Agency's termination penalty was not legally permissible due to its faulty *Douglas* factors analysis.[43] He disagrees with Agency's analysis of *Douglas* factors 2, 3, 4, 5, 7, 8, and 12. It is uncontroverted that Agency considered the *Douglas* factors when determining Employee's penalty.[44] However, Employee counters by saying that Agency did not follow applicable laws or regulations when it incorrectly applied the *Douglas* factors analysis by

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[40] *Gunty v. Dist. of Columbia. Dep't of Employment Servs.,* 524 A.2d 1192, 1194 (D.C.1987)
[41] *See Gunty*, 524 A.2d at 1198.
[42] *Lynn Edwards v. D.C. MPD*, OEA Matter No.: 1601-0012-05, *Opinion and Order on Petition for Review* (May 23, 2011) at 92.
[43] *Douglas v. Veterans Administration*, 5 MSPR 280, 303-308 (1981).
[44] AR at Tab 7. AAP Findings and Recommendation.

failing to consider mitigating circumstances. Employee states that Agency mischaracterizes his actions when it labeled them as 'aggravating' when they should actually be deemed as 'neutral' or 'mitigating.' Employee then provided several reasons for his argument. He indicated that if Agency had not performed such a perfunctory analysis of the *Douglas* factors, it would realize that a lesser penalty was appropriate.

The OEA may overturn the agency decision only if it finds that the agency "failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness."[45] "Not all of [the *Douglas*] factors will be pertinent in every case, and frequently in the individual case some of the pertinent factors will weigh in the [petitioner's] favor while others may not or may even constitute aggravating circumstances."[46] Although the OEA has "'marginally greater latitude of review' than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate."[47] The "primary discretion" in selecting a penalty has been entrusted to agency management.[48]

> Selection of an appropriate penalty must ... involve a responsible balancing of the relevant factors in the individual case. The OEA's role in this process is not to insist that the balance be struck precisely where the OEA would choose to strike it if the OEA were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the OEA's review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the OEA finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the OEA then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.[49]

The D.C. Superior Court noted that *Douglas* outlines the factors that must be considered but it does not require a certain level of consideration be devoted to each factor.[50] I note that Employee does not deny that Agency weighed the *Douglas* factors in determining his penalty; rather, Employee disagrees with the way Agency weighed the *Douglas* factors. In Employee's view, Agency should have considered the factors in a way that wholly rebounds to his benefit, without regard to other considerations that reflect upon Agency's ability to achieve its mission. I find that Employee's objections to the AAP's *Douglas* factor analysis are simply disagreements with the AAP's evaluation of said factors in his case. There is no

[45] *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1985).
[46] *Douglas, supra*, 5 M.S.P.R. at 306.
[47] *Stokes*, 502 A.2d at 1011 (citing *Douglas*, 5 M.S.P.R. at 300).
[48] *Id*.
[49] *Id.* (quoting *Douglas*, 5 M.S.P.R. at 300) (internal quotations marks and bracketing omitted).
[50] *Eugene Goforth v. Office of Employee Appeals, et. al.,* Case No. 2020 CA 005084 (D.C. Super. Ct. July 9, 2021).

requirement that the Agency must conform its *Douglas* factor analysis to Employee's satisfaction. I therefore find Employee's objections does not indicate that Agency failed to follow the appropriate regulations and policies.

Any review by this Office of an agency decision of selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[51] Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."[52] When the charge is upheld, this Office has held that it will leave Agency's penalty "undisturbed" when "the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment."[53]

In this matter, the record shows that Agency's decision was based on a full and thorough consideration of the nature and seriousness of the offense, as well as any mitigating factors present. I find that Agency exercised its primary responsibility for managing and disciplining its workforce by electing to terminate Employee for his actions which demonstrated several instances of neglect of duty, conduct unbecoming of an officer, conduct detrimental to Agency, and insubordination. For the foregoing reasons, I conclude that Agency's decision to select removal as the appropriate penalty for Employee's infractions was not an abuse of discretion and should be upheld.

ORDER

It is hereby ORDERED that Agency's action of removing Employee from service is UPHELD.

FOR THE OFFICE: *Joseph E. Lim*
JOSEPH E. LIM, Esq.
Senior Administrative Judge

[51] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).
[52] *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).
[53] *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).