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

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
MICHAEL SKELLY,	)	OEA Matter No. 1601-0001-16
Employee	)	
	)	
v.	)	Date of Issuance: March 20, 2018
	)	
METROPOLITAN	)	
POLICE DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Michael Skelly ("Employee") worked as a Sergeant with the Metropolitan Police Department ("Agency"). On October 15, 2014, Agency issued a Notice of Proposed Adverse Action, charging Employee with engaging in conduct constituting a crime; failure to obey orders and directives issued by the Chief of Police; conduct unbecoming of an officer; and prejudicial conduct. The charges stemmed from Employee's arrest for receiving and filling prescriptions for multiple narcotics from different medical providers. Agency also alleged that Employee altered a prescription for Percocet and that he was untruthful in his communications with doctors regarding the prescriptions that he was taking. Employee subsequently requested to have an Adverse Action Panel ("Trial Panel") review the charges and specifications against him. After

holding an evidentiary hearing, the Trial Panel recommended that Employee be terminated based on each of the four charges. On June 2, 2015, Agency issued its Final Notice of Adverse Action, sustaining the Panel's recommendation. Employee's termination became effective on September 4, 2015.

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 2, 2015. In his appeal, Employee argued that his termination was improper and requested that he be reinstated with back pay and benefits.[1] Agency filed its Answer to the Petition for Appeal on November 9, 2015. It denied that Employee was wrongfully terminated and requested a hearing.[2]

An OEA Administrative Judge ("AJ") was assigned to the matter in January of 2016. On April 4, 2016, the AJ held a prehearing conference to assess the parties' arguments. During the conference, the AJ determined that an evidentiary hearing was not warranted. The parties were then ordered to submit briefs addressing whether the Trial Panel's decision was supported by substantial evidence; whether Agency committed harmful procedural error; and whether Agency's termination action was taken in accordance with all applicable laws, rules, and regulations.[3]

In his brief, Employee alleged that Agency failed to state a specific offense in support of its assertion that he violated U.S. Code Title 21-843 because there was no evidence to prove that he was involved in deception and/or fraud. Employee also contended that he did not commit a crime by altering a prescription for Percocet and that this charge was based upon unsubstantiated hearsay testimony. He further stated that he did not violate Agency's drug policy because the directive does not prohibit employees from possessing or taking lawfully prescribed medications

[1] *Petition for Appeal* (October 2, 2015).
[2] *Agency Answer to Petition for Appeal* (November 9, 2015).
[3] *Order on Briefs* (May 26, 2016).

at work. Moreover, Employee opined that the conduct unbecoming charge could not be supported because the accompanying specifications erroneously relied on the credibility of Dr. Lastrapes, a Police and Fire Chief Physician ("PFC"), who did not testify at the Trial Panel and did not provide an affidavit or written statement.

Next, Employee posited that he was denied due process regarding Agency's allegation that he was less than truthful to PFC physicians because he was unable to adequately defend against the charge provided in Agency's proposed notice. Lastly, Employee claimed that the prejudicial conduct charge could not be sustained because there was no rule or regulation which prohibited him from continuing to take medications prescribed by his treating physicians. Therefore, Employee requested that the Trial Panel's decision be reversed and that Agency's termination action be overturned.[4]

In response, Agency asserted that its conclusions regarding Employee's misconduct were supported by substantial evidence. It stated that the evidence reflected the excessive amounts of controlled narcotics that Employee was taking and the unlawful methods by which he was able to obtain prescriptions for the drugs. In addition, Agency provided that the Trial Panel had the opportunity to observe each witness's demeanor and assess their credibility, ultimately determining that Employee did not provide credible testimony. Agency claimed that the act of engaging in a scheme to obtain controlled substances from different providers was criminal behavior and violated U.S. Code Title 21-843. Further, it argued that Employee committed misconduct by providing untruthful information to PFC physicians about the medications he was taking and the illnesses for which he was receiving treatment. As a result, Agency requested that the AJ affirm its termination action.[5]

[4] *Employee Brief* (June 10, 2016).
[5] *Agency Brief* (July 27, 2016). Employee filed a Reply Brief on August 23, 2016, stating that the facts recited by

An Initial Decision was issued on May 17, 2017. The AJ first determined that under the holding in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002), OEA was limited to making a decision solely on the record if certain conditions were met.[6] Having determined that each condition set forth in *Pinkard* was satisfied, the AJ stated that the issues to be decided before OEA were whether the Trial Panel's decision was supported by substantial evidence; whether there was harmful procedural error; and whether Agency's termination action was done in accordance with applicable laws, rules, or regulations.[7]

Next, the AJ provided that Agency was not prevented from levying administrative charges against Employee for the same criminal violations which were previously rejected by federal prosecutors in D.C. and Virginia because they were expunged. The AJ noted that criminal charges were different in scope and nature from administrative charges. Thus, the declination letter issued by the U.S. Attorney's Office did not require that the corresponding administrative personnel charges be withdrawn.

Next, the AJ concluded that there was substantial evidence in the record to support a

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Agency did not support the charges and specifications against him. Employee also reiterated his previous arguments and maintained that Agency's charges were based entirely on unsubstantiated, irrelevant, and unreliable hearsay. *Employee Reply Brief* (August 23, 2016).

[6] *Initial Decision* (April 6, 2013). Under *Pinkard*, the following conditions must be 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;
> 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] 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 a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee.

[7] *Id*. at 2.

finding that Employee engaged in a scheme to obtain controlled substances, in violation of General Order ("GO") 120.21, Attachment A, Part A-7. He stated that under U.S. Code Title 21-843, Employee's behavior constituted misconduct that would be deemed a crime. Similarly, the AJ stated that Employee's alteration of a prescription for Percocet was an act which constituted a crime. Consequently, he held that Charge No. 1 properly alleged misconduct and should be sustained.

With respect to the failure to observe orders charge, the AJ determined that Employee violated Agency's Drug Free Work Place Directive, which prohibits the use of controlled substances in the workplace. According to the AJ, the record reflected that Employee was taking excessive amounts of controlled substances while on duty and failed to notify Agency. Thus, he sustained Charge No. 2.

Regarding the conduct unbecoming accusation, the AJ provided that Agency properly charged Employee with misconduct after he was untruthful to Dr. Lastrapes about his regular physician being out of town in an effort to obtain a prescription. Additionally, the AJ stated that Employee was untruthful to PFC physicians about the controlled substances he was taking and the injuries and illnesses for which he was receiving treatment.

Concerning the prejudicial conduct charge, the AJ concluded that Agency properly alleged misconduct for each specification. He noted that Employee displayed a continuing pattern of obtaining controlled substances from several providers, even after being told by his treating physicians that his actions were problematic. The AJ also dismissed Employee's argument that the record failed to prove that he was guilty of diversion under 21 U.S.C. § 843. He emphasized that a reading of the statute's plain meaning only required a showing that a controlled substance was acquired by fraudulent means, not that the substance be obtained by

fraud and sold illegally. Further, the AJ noted that the Trial Panel correctly admitted and relied upon hearsay evidence during the evidentiary hearing, as such evidence is routinely permissible in administrative hearings. He also stated that the premise of Agency's adverse action was not that Employee was unlawfully prescribed controlled substances. Rather, the case against Employee was based on his acquisition of prescriptions through a devised scheme to obtain excessive amounts of controlled substances. Accordingly, the AJ concluded that the conduct of the treating physicians in prescribing medications to Employee was not the issue before the Trial Panel.

After examining the record, the AJ held that Agency's case was not based solely on the impeachable hearsay of a single witness, Agent Ikner, who was responsible for conducting the investigation into Employee's alleged misconduct. He opined that Agency's case was supported and corroborated by Agency's other witnesses, as well as the documentary evidence obtained from judicial bodies in surrounding jurisdictions.

Finally, the AJ held that the Trial Panel provided a detailed summary of the relevant evidence in its Findings of Fact and Conclusions of Law. He stated that the Panel was well within its right to assess witness credibility. While the AJ was sympathetic to Employee's need for painkillers due to his injuries, he ultimately concluded that the Trial Panel's findings were supported by substantial evidence. Consequently, Employee's termination was upheld.[8]

Employee disagreed and filed Petition for Review with OEA's Board. He argues that the Initial Decision is based on an erroneous interpretation of statute; that the AJ's conclusions of law were not based on substantial evidence; and that the Initial Decision failed to address all issues of law and fact that were properly raised in the appeal. Specifically, Employee asserts that

[8] *Initial Decision* (May 17, 2017). Neither party alleged that Agency committed a harmful procedural error or that it failed to conduct its adverse action in accordance with all applicable laws, rules, or regulations. Therefore, the AJ did not address these issues in his decision.

the AJ failed to address the requisite elements of the offense for each of the specifications contained in the charges levied against him, including identifying what evidence is considered relevant to each specification. He further states that the Initial Decision lacks compliance with the requisite judicial analysis procedures established by the Supreme Court and the Merit Systems Protection Board ("MSPB") pertinent to burden of proof, reliance on hearsay evidence, and the need for expert witness testimony. According to Employee, Agency failed to meet its burden of proof in showing that he used an excessive amount of controlled medications over the years or that he fashioned a "scheme" to improperly obtain the drugs. Lastly, he disputes the AJ's findings with respect to each of the charges and corresponding specifications provided in Agency's Notice of Proposed Adverse Action. Therefore, Employee asks this Board to reverse the Initial Decision.[9]

Agency filed a Brief in Opposition to Employee's Petition for Review on July 21, 2017. It claims that the Initial Decision is based substantial evidence and details arguments regarding why each charge and specification is supported by the record. Agency also reiterates its position that Employee engaged in a scheme to obtain excessive amounts of controlled substances for personal use; thereby, violating federal statute and Agency's policy related to drugs in the workplace. As such, Agency asks this Board to uphold the Initial Decision and deny Employee's Petition for Review.[10]

[9] *Petition for Review* (July 21, 2017).
[10] *Agency's Opposition to Employee's Petition for Review* (July 21, 2017). Employee subsequently filed a Reply Brief on August 14, 2017, in which he responds to Agency's arguments regarding its position on the validity of the AJ's findings. On September 6, 2017, Agency filed a Motion to Strike Employee's Reply Brief, arguing that Employee was not permitted to file a Reply Brief to Agency's oppositional brief. Employee then filed an Opposition to Agency's Motion to Strike on September 20, 2017.

Substantial Evidence

On Petition for Review, this Board must determine whether the AJ's findings were based on substantial evidence in the record. The Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), held that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[11] Under OEA Rule 628.1, the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. Preponderance of the evidence shall mean "that degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

Charge No. 1: Violation of General Order Series 120.21, Attachment A, Part A-7

Agency's first charge is based on Employee's violation of GO 120.21 for "[c]onviction of any member of the force in any court of competent jurisdiction…or is deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction…." According to Agency, Specification No. 1 alleges that Employee violated U.S. Code Title 21-843 by receiving prescriptions for multiple narcotics from different providers and refilling them at various locations. However, Employee argues that the facts do not allege an actual violation of U.S. Code Title 21-843 or any other crime or misconduct which can constitute a basis for discipline. As a result, Employee claims that the AJ committed a clear error of law. U.S. Code Title 21-843 states the following in pertinent part:

> Whosoever knowingly and willfully executes, or attempts to execute, a scheme or artifice:

[11] *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).

> (1) To defraud any healthcare benefit program; or
> (2) To obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery or payment for health care benefits, items, or services…

Here, there is substantial evidence in the record to uphold the AJ's findings with respect to this specification. Employee posits that Agency erroneously relied upon his arrest for "Obtaining Drug: Forgery or Altered Prescription" because the charge was accepted and dismissed by an Arlington County Magistrate after the U.S. Attorney for the District of Columbia declined to prosecute Employee following the conclusion of its investigation. However, the language of GO 120.21 does not require a conviction to sustain a charge for "…conduct which would constitute a crime, whether or not a court record reflects a conviction…." Rather, the underlying conduct must be examined to determine whether the employee's behavior was criminal in nature.[12]

Agency and the Drug Enforcement Agency ("DEA") Task Force conducted a joint investigation in collaboration with the Internal Affairs Department ("IAD") to hold several interviews with the multiple doctors who treated Employee. The evidence "led investigators to believe that probable cause…substantiated [the] allegation that [Employee] was obtaining prescriptions through false pretense, seeking medical care from multiple providers and being prescribed the same narcotic medications in addition to narcotics in excess of what was

[12] *See Fullord-Cuthbertson v. Department of Corrections*, OEA Matter No. 1601-0018-13R16, *Opinion and Order on Petition for Review* (June 6, 2017). On Petition for Review, OEA's Board addressed whether an arrest is required to sustain a charge for "any act which constitutes a criminal offense whether or not the act results in a conviction" under D.C. Municipal Regulation §1603.3(h). The Board agreed with the AJ's reasoning that the purpose of the crafting the law was to ensure that an employee who commits a criminal act, such as fraud in the unlawful collection of unemployment insurance benefits, can be subject to an adverse personnel action, notwithstanding the disposition of any criminal charges brought against them.

needed."[13] The joint investigation also alleged that Employee was exploiting his health care insurance in a fraudulent manner, and utilized diversion tactics to obtain prescriptions in D.C., Maryland, and Virginia.

While it is true that he was never criminally convicted, Employee admitted to the Trial Panel that he refilled prescriptions prior to exhausting his current medication allowance in order to increase the original amount that was prescribed. Employee even acknowledged that he manipulated the system in order to refill prescriptions.[14] Further, Employee was prescribed medication from a physician after falsely informing the doctor that he suffered from Post-Traumatic Stress Disorder as a result of being a member of Agency's bomb squad.[15] This conduct violates U.S. Code Title 21-843 because Employee utilized false pretenses to obtain controlled substances. It should be noted that this Board agrees with Employee's supposition that the act of filling multiple prescriptions at different locations was not a criminal activity *per se*. However, obtaining said medications through unscrupulous methods and devises for the purpose of obtaining excessive amounts of narcotics is prohibited by statute. While he disagrees with the Panel's finding, there remains a considerable amount of evidence in the record to show that Employee engaged in conduct which constituted a crime. Accordingly, this Board finds that the AJ properly addressed this issue, and we agree with his determination that Charge No. 1, Specification No. 1 is supported by the evidence.

Assuming arguendo that there is insufficient proof in the record to demonstrate that Employee violated Title 21-843, the record is replete with evidence to support Charge No. 1,

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[13] Metropolitan Police Department Internal Affairs Bureau, Final Investigative Report Concerning Allegations of Misconduct by Sergeant Michael Skelly Patrol Services and School Security Bureau—Fifth District, IS #11-002950 (August 19, 2014).
[14] *Agency Answer to Petition for Appeal*, Adverse Action Panel's Findings of Fact and Conclusions of Law, Tab 1 (November 9, 2015).
[15] *Id*. As a part of Agency's investigation, Employee's personnel file revealed that he was never a member of an Explosive Ordinance Unit.

Specification No. 2. Employee claims that he never altered a prescription for Percocet that was written by Dr. Lastrapes by placing the number "1" in the refill area on the prescription (RX 103340). He maintains that Agent Ikner provided false testimony in this regard and that he attempted to influence Dr. Lastrapes' statement by suggesting what may have happened to the altered prescription. Yet, during his first and second investigative interviews, Dr. Lastrapes provided consistent accounts of the incident concerning RX 103340, stating that he did not place a "1" in the refill section for the Percocet prescription because a refill cannot be requested for that type of drug.[16] The Trial Panel agreed with Dr. Lastrapes and concluded that Employee knowingly falsified a prescription for a controlled substance. Conversely, the Panel found Employee's version of events to be untruthful. The Trial Panel was the finder of fact in this case, and the Board will not second guess its credibility determinations. As a result, we find that the AJ did not err in finding that there is substantial evidence in the record to sustain Charge No. 1, Specification No. 2.

Charge No. 2: Violation of General Order Series 120.21, Attachment A, Part A-16

Charge No. 2, Specification No. 1 was based on Employee's failure to obey orders and directives issued by the Chief of Police. Agency explains that Employee violated its Drug Free Work Place Directive, which addresses the regulation of drug use in the workplace. Employee argues that this specification does not allege that Employee engaged in any specific conduct which violated the directive because it does not prohibit the use of controlled substances in the workplace. Thus, Employee opines that even if he was taking excessive prescription medications while on duty, his actions did not violate the District's drug use policy. Under the policy,

[16] During his November 11, 2011 interview with Agent Ikner, Dr. Lastrapes was shown a prescription that Employee attempted to fill at a Rite Aid Pharmacy containing his signature. When asked if Dr. Lastrapes placed the number "1" on the refill line, he replied "[w]ith certainty, I did not write it. There are no refills on Schedule II drugs. You have to get an original every time."

employees of the District of Columbia government are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the work place.[17] The directive states the following in pertinent part:

> II. Drug Free Workplace Awareness Program
>
> > The use and/or position of illicit drugs by District Employees in the workplace impairs the government's ability to carry out its mission, and poses substantial dangers to employee, clients and the public.
> >
> > Those who use and/or possess drugs put themselves and those around them in danger of arrest and conviction for drug-related crimes.
> >
> > The District values its employees, and urges all individuals with substance abuse problems to seek counseling and rehabilitation.

Here, it is undisputed that Employee used controlled substances for numerous, legitimate injuries that he sustained over the years while on duty.[18] During the administrative hearing, Employee admitted that he was only supposed to take three pills a day. Instead, Employee ingested up to ten pills a day because he became resistant to the effects of the medication.[19] This Board disagrees with Employee's position and finds that there is substantial evidence in the record to uphold the AJ's determination that Employee violated the Drug Free Work Place Awareness Program. Employee obtained controlled narcotics by inappropriate pretenses and failed to notify Agency that he was using excessive amounts of the medications.[20] Under the

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[17] *Agency Answer to Petition for Appeal*, Tab 1.
[18] The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986. The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.
[19] *Trial Panel Finding Number* 64.
[20] The Board must note that Title 21, Section 801(a)(1) of the United States Controlled Substance Act recognizes that many controlled drugs have a "useful and legitimate medical purpose and are necessary to maintain the health

program, employees who violate the directives are subject to disciplinary action. Accordingly, Charge No. 2, Specification No. 1 must be sustained.

Charge No. 3: Violation of General Order 120.21, Attachment A, Part A-12 and General Order 201.26, Part 1-B-22.

Next, Employee was charged with "[c]onduct unbecoming of an officer, including acts detrimental to good discipline, conduct that would affect adversely the employee's or the agency's ability to perform effectively…." In Specification No. 1, Agency alleges that Employee was willfully and knowingly untruthful to Dr. Lastrapes when he obtained a prescription for Percocet by fraudulent means when Employee stated that his private physician was out of town on March 17, 2011. Employee counters Agency's assertion and argues that he never requested a prescription from Dr. Lastrapes and that the doctor decided on his own initiative to write him a prescription for Percocet.

The Trial Panel dismissed Employee's argument, stating that "[Employee] was untruthful when he advised PFC Physician Lastrapes that his personal physician was out of town which resulted in Dr. Lastrapes prescribing [Employee] Percocet."[21] While Employee questions the veracity of Agent Ikner's recitation of events during the investigation, the AJ was reasonable in concluding that Agency met its burden of proof with respect to this specification. The Panel was permitted to rely upon hearsay evidence as a basis for reaching its conclusion and there is no clear error on the part of the AJ. For this reason, we find Employee's argument to be unpersuasive.

Concerning Specification No. 2, Agency purports that Employee was "less than truthful

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and general welfare of the American people." The District's drug use directive does not specifically address its policy with respect to employees who have lawfully obtained a controlled substance from a medical healthcare provider for legitimate reasons. Clarification and specification regarding such would be useful in providing guidance to this Office for adjudication purposes.

[21] *Panel Findings of Fact.*

to several Police and Fire Clinic physicians about the narcotic medications [Employee was] taking and the injuries for which [he] [received] treatment." Even when construed in a light most favorable to Agency, this allegation lacks specificity and is ambiguous, at best. Agency provides no legal standard for assessing misconduct as it relates to Employee being less than truthful. Nor, does it offer any credible facts to support it position that Employee's statements to Dr. Lastrapes violated General Order 201.26. This is not to say that Employee's act of obtaining an excessive amount of controlled narcotics was proper. However, Agency fails to identify which PFC physicians it was referring to in relation to this specification. It further fails to pinpoint the dates on which Employee proffered "less than truthful" information to PFC physicians. For this reason, this Board cannot soundly conclude that Charge No. 3, Specification No. 2 was based on substantial evidence.

Charge No. 4: Violation of General Order 120.21, Table of Offenses & Penalties, Part A,

Lastly, Agency charged Employee with "any conduct not specifically set forth in this order, which is prejudicial to the reputation and good order of the police force…." Agency based its charge on Employee's act of obtaining narcotics from different providers after being advised by Dr. John Felley and Dr. Z. Chris that Aetna insurance notified them, in writing, that Employee was receiving prescriptions from several providers. It is Agency's contention that Employee knew that this behavior was not proper. Conversely, Employee disputes this allegation and states that Agency's specification is defective because it fails to state facts which constitute actual misconduct. This Board disagrees and finds that Charge No. 4, Specification No. 1, is based on substantial evidence.

During his investigation with Agent Ikner, Dr. Feeley acknowledged receiving notices from Employee's medical insurance provider, Aetna, in February and August of 2011. Aetna

advised Dr. Feeley that Employee was "red flagged" because he was seeking prescriptions for narcotics from multiple providers. Yet, he stated that he continued to prescribe medications to Employee. Dr. Feeley further stated that he did not think anything was wrong with prescribing a narcotic to Employee for his back pain in spite of Aetna's "red flag" notification.[22] Similarly, Dr. Z. Chris acknowledged receiving notice from Aetna in 2011 stating that Employee was seeing multiple doctors for pain medication. Dr. Z. Chris subsequently called Employee to inform him about the notice and told him that the DEA probably received the same warning letter.

The conduct of Employee's medical providers is not at issue in this case, as they exercised their professional judgment in prescribing Employee medications after being warned by Aetna that Employee had received hundreds of controlled narcotics over the years. However, Employee made misrepresentations to these providers and failed to disclose that he had access to the same prescriptions for identical ailments even after being warned that his activities were problematic. Of most concern, Employee was under the influence of a large amount of controlled substances while on full duty and failed to notify Agency of his status. This misconduct is prejudicial to the good order of the police force because Employee exercised a continuous and deliberate ploy to obtain narcotics, which, if used in excess or improperly, placed both Employee and the public at risk of danger. Therefore, this Board finds that the AJ did not err in upholding Charge No. 4, Specification No. 1.

Conclusion

Based on the foregoing, this Board finds that the Initial Decision was based on substantial evidence in the record, notwithstanding the existence of contradicting evidence to support an alternate conclusion. The AJ properly addressed each charge and specification against Employee. Notwithstanding Charge No. 3, Specification No. 2, the AJ's conclusions of law flowed

[22] *Agency Answer to Petition for Appeal*, Tab 1, Attachment #16.

rationally from the evidence presented. Thus, we can find no credible basis for disturbing the AJ's conclusion that Employee's termination was proper. Consequently, we must deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD**:**

_____
Sheree L. Price, Chair

_____
Vera M. Abbott

_____
Patricia Hobson Wilson

_____
P. Victoria Williams

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Jelani Freeman

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.