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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE, ¹	)	
Employee	)	OEA Matter No. 1601-0029-25
	)	
v.	)	Date of Issuance: August 12, 2026
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	NATIYA CURTIS, Esq.
Agency	)	Administrative Judge
	)	
Daniel J. McCartin, Esq., Employee Representative		
Michele McGee, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 7, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Metropolitan Police Department’s (“Agency” or “MPD”) decision to terminate him from his position as a Police Officer effective February 7, 2025.² On March 10, 2025, OEA issued a Request for Agency’s Answer to Employee’s Petition for Appeal and required that Agency submit its answer by April 9, 2025. Agency submitted its Answer on April 9, 2025.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on April 10, 2025. On April 22, 2025, I issued an Order Scheduling a Prehearing Conference for May 22, 2025, with Prehearing Statements due by May 15, 2025. On April 30, 2025, Employee, by and through his representative, filed a Consent Motion to continue the Prehearing Conference citing scheduling conflicts. On May 1, 2025, I issued an Order which granted Employee’s Consent Motion and rescheduled the Prehearing Conference for June 3, 2025. Prehearing Statements were due by May 27, 2025. Employee submitted his Prehearing Statement on May 27, 2025. On that same date, Agency filed a Consent Motion to Extend the Filing Deadlines for Prehearing Statements and to Reset the Prehearing Conference to a date after June 6, 2025. Agency cited that more time was required to prepare its Prehearing Statement. In an Order dated May 30, 2025, the undersigned granted Agency’s

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

² Employee’s Petition for Appeal, p. 2 (March 7, 2025).

Consent Motion and rescheduled the Prehearing Conference for June 20, 2025. Prehearing Statements were due by June 13, 2025.³ Agency submitted its Prehearing Statement by the deadline.

Both parties appeared for the Prehearing Conference on June 20, 2025. During the Prehearing Conference, I found that because there was an Adverse Action Panel hearing (“Adverse Action Panel” or “Trial Board”) in this matter, that OEA’s review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). As a result, on June 24, 2025, the undersigned issued a Post Prehearing Conference Order, requiring the parties to submit briefs addressing whether: (1) 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 all laws and/or regulations. Agency’s brief was due by August 8, 2025. Employee’s brief was due by September 4, 2025. Agency’s sur-reply brief was due by September 25, 2025. On August 7, 2025, Agency Filed a Consent Motion to Extend the Filing Deadlines for Agency’s Brief citing that more time was required to prepare its brief and requested an extension to August 15, 2025. In an order dated August 8, 2025, the undersigned granted Agency’s Consent Motion and reset the briefing schedule. Agency’s brief was now due by August 15, 2025. Employee’s brief was due by September 11, 2025, and Agency’s sur-reply was due by October 2, 2025. Agency filed its brief on August 15, 2025 and Employee filed his brief on September 9, 2025.

On October 2, 2025, Agency filed a Consent Motion to Extend Filing Deadline for Agency’s Sur Reply Brief. On October 7, 2025, the undersigned issued an Order Regarding Agency’s Consent Motion to Extend Deadline and granted Agency’s Consent Motion. Agency’s sur-reply was now due by October 17, 2025. On October 16, 2025, Agency filed an additional Consent Motion to Extend Filing Deadlines for Agency’s Sur-Reply, citing competing deadlines. On October 17, 2025, I issued an Order granting Agency’s Motion. Agency’s sur-reply was due by October 24, 2025. Agency submitted its sur-reply on October 24, 2025. On June 29, 2026, I issued an Order to Supplement the Record. Agency’s brief was due by July 17, 2026, and Employee’s Brief was due by July 31, 2026. In lieu of submitting briefs, Agency filed a statement on July 16, 2026, noting that both parties consented to the use of MPD General Order 120.21, that became effective on November 22, 2022.⁴ 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;
- 3) Whether Agency’s action was done in accordance with applicable laws or regulations.

BURDEN OF PROOF

³ The undersigned provided Employee the option to revise his Prehearing statement and resubmit by the prescribed deadline.

⁴ The charged misconduct occurred between October 2021 and March 2022. Thus, the undersigned required the parties to address whether General Order 120.21 with an effective date of November 22, 2022, applies to this appeal.

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.⁵

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 CHARGES⁶

According to the Trial Board’s Findings, Agency terminated Employee effective February 7, 2025⁷ based on the following charges and specifications, which are reprinted in pertinent part below:⁸

Charge 1: Violation of General Order Series 120.21, Attachment A, Part 24, which states, *“Any 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.”*

Specification 1:

Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with Ms. [J.], at least twice a week.

Charge 2: Violation of General Order 120.21, Attachment A, 16, which states, *“Failure to Obey Orders and Directives issued by the Chief of Police.”*

Specification 1:

Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. You admitted that there was no official or duty-related purpose for your presence at your home, and you failed to notify an official or the dispatcher of your whereabouts. You failed to request permission to leave your assigned patrol area from an on-duty official or the dispatcher. This misconduct is

⁵ OEA Rule § 699.1.

⁶ Agency’s Answer to Petition for Appeal, Tab 6, p. 1060 (April 9, 2025).

⁷ Agency’s Brief, p. 5 (August 15, 2025).

⁸ Agency’s Answer to Petition for Appeal, Tab 6, pp. 1084-1094 (April 9, 2025).

further defined as a Violation of General Order GO-PER 201.26, V, B, 12, which states, *“Members shall constantly patrol their assigned area unless otherwise directed and shall not return to the station except on official business and approved by an official.”*

Specification 2:

Specifically, on August 31, 2023, you accessed several reports in the Mark43 RMS related to Ms. [J.]. You had no official law enforcement purpose for accessing these reports. This misconduct is further defined as Violation of General Order GO-PER 401.01, IV, J. which states, *“Members shall restrict their use of Records Management System (RMS) to official law enforcement purposes. Under no circumstances shall members access RMS for personal use or inquiries.”*

Specification 3:

Specifically on September 23, 2023, you accessed several reports in the Mark43 RMS related to Ms. [J.]. You had no official law enforcement purpose for accessing these reports. This misconduct is further defined as Violation of General Order GO-PER 401.01, IV, J. Which states, *“Members shall restrict their use of Records Management System (RMS) to official law enforcement purposes. Under no circumstances shall members access RMS for personal use or inquiries.”*

Specification 4:

Specifically on September 29, 2023, you accessed several reports in the Mark43 RMS related to Ms. [J.]. You had no official law enforcement purpose for accessing these reports. This misconduct is further defined as Violation of General Order GO-PER 401.01, IV, J. Which states, *“Members shall restrict their use of Records Management System (RMS) to official law enforcement purposes. Under no circumstances shall members access RMS for personal use or inquiries.”*

Charge 3: Violation of General Order 120.21, Attachment A, Part 11, which states, *“Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee’s or agency’s ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.”*

Specification 1:

Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with [Ms. J.], at least twice a week.

Charge 4: Violation of General Order 120.21, Attachment A, 14, which states, *“Neglect of duty to which assigned, or required by rules and regulations adopted by the Department.”*

Specification 1:

Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. This was neglectful of your duties as a patrol officer to patrol your assigned area, respond to calls for service, and assist citizens.

The panel unanimously found Employee guilty of all charges and specifications.

SUMMARY OF THE TESTIMONY

On October 29, 2024, Agency held an Adverse Action Panel hearing in this matter. During the hearing, testimonial and documentary evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as “Tr.”), generated and reproduced as part of the Adverse Action Panel hearing.⁹

Agency’s Case-in-Chief

Sergeant Jabari Welch (“Sgt. Welch”) – Tr. pp. 33-93

Sgt. Welch is the Sergeant at Patrol Services with the Metropolitan Police Department (“MPD”). Prior to this assignment Sgt. Welch was assigned to the Internal Affairs Division where he investigated serious misconduct cases assigned to him by MPD. Tr. 33-34. Sgt. Welch testified that he handled a misconduct investigation regarding Employee. Tr. 34. He indicated that the initial complaint against Employee was filed by Ms. J., and he reviewed the allegations that were listed in the complaint and proceeded with his investigation from there. Tr. 34-35. Sgt. Welch noted that as part of his investigation he interviewed Ms. J. two times, once by phone and once in person. Tr. 35. Sgt. Welch affirmed that upon interviewing Ms. J, he discovered information that led him to believe that Employee may have violated MPD’s General Orders. Sgt. Welch testified that Ms. J. indicated that Employee resided in the Second police District; yet, while on duty Employee would respond to his apartment approximately four (4) to five (5) time per week where he and Ms. J would engage in sexual acts while Employee was still on duty. Tr. 36-37.

When asked how Ms. J. knew that Employee was on duty, Sgt. Welch noted that Ms. J. stated that Employee had his police radio, his firearm, and helmet with him because he was a mountain bike officer. Sgt. Welch noted that Ms. J. also stated that the length of time Employee spent at home varied depending on the day, and his need to respond to calls for service. Sgt. Welch testified that Ms. J. noted in her interview that the time period that Employee reported to his apartment was between October 2021 through April 2022. Tr. 37.

Sgt. Welch confirmed that he also interviewed Employee two (2) times as part of the investigation. Tr. 39. Sgt. Welch stated that Employee noted in his interview that he would walk to his residence while on duty, which was approximately two (2) blocks from the Second police District station. Tr. 39-40. Sgt. Welch noted that Employee stated in his interview that he would pick up food before going to his residence, take his lunch break at his residence and engage in sexual acts with Ms. J. while there. Tr. 40. Sgt. Welch noted that Employee indicated that he did not request a “10-70” or lunch break to the dispatcher at the time he was inside his apartment. Tr. 40-41. Sgt. Welch further noted that

⁹ Agency’s Answer Tab 5, p. 1419 (April 9, 2025).

Employee stated that he responded to his residence approximately twice a week and admitted that he did not notify an official of his whereabouts, which is required when an officer goes on lunch break. Tr. 41-42.

Sgt. Welch testified that Employee was assigned to patrol PSA 206 and his home was located in PSA 204. Sgt. Welch affirmed that it is problematic that an officer would leave their assignment to go to a different PSA without notifying an official. Tr. 42. Sgt. Welch affirmed that Employee did not notify any official that he was going to another PSA to go home. Tr. 43. Sgt. Welch noted that Employee indicated that he spent approximately forty-five minutes at home. Sgt. Welch clarified that an officer is provided a thirty-minute lunch break. Tr. 43.

Sgt. Welch further testified that Employee noted that he engaged in sexual activity with Ms. J. from October 2021 to March 2022. Tr. 47. Sgt. Welch affirmed that at the conclusion of his investigation, that he recommended the charges against Employee be sustained. Tr. 47-48.

On cross-examination, Sgt. Welch affirmed that the investigation was initiated based on an "OPC" complaint filed by Ms. J. and was referred to him to investigate what Ms. J. alleged in the complaint. Tr. 50-51. Sgt. Welch affirmed that the narrative section of his investigative report stated that there was an ongoing custody dispute between Employee and Ms. J. and she alleged that Employee threatened her on August 25, 2023. Sgt. Welch also affirmed that Ms. J. alleged that Employee "keeps asking for my address. He's aware I have it concealed for safety on court documents." Sgt. Welch additionally agreed that Ms. J. further alleged that Employee was using his police influence to harass her and that Employee was putting their children in danger. Tr. 53-54. Sgt. Welch testified that during Ms. J.'s interview, "she confirmed that there were no specific threats that were made by [Employee]." Sgt. Welch affirmed that Employee and Ms. J. were authorized by court to communicate regarding the welfare of their children, and that Child and Family Services concluded that the physical abuse allegations submitted by Ms. J. were unsupported and the case was closed. Tr. 55. Sgt. Welch affirmed that his investigation revealed that Employee obtained Ms. J.'s address from a mobile app for their children's daycare provider, which requires them to update their home address, and that Ms. J. did not have her address restricted from public access through D.C. Superior Court. Tr. 56. Sgt. Welch affirmed that all of the allegations that Ms. J. made were investigated and found to have no veracity. Tr. 57-58.

Sgt. Welch further affirmed that that Sgt. Nguyen interviewed Ms. J. because Ms. J. contacted him and made a complaint that Employee had attempted to intimidate her, yet Sgt. Nguyen found no evidence of intimidation. Tr. 58-59. When questioned whether Employee was granted a temporary protective order against Ms. J. for threatening Employee with a knife, Sgt. Welch answered affirmatively. Sgt. Welch further affirmed that Employee was granted a civil protection order against Ms. J. on September 29, 2023, and Ms. J.'s attempt to file a protective order against Employee was denied. Tr. 60.

Sgt. Welch also testified that he interviewed Employee regarding the allegations that Employee engaged in sexual activities while on duty. Tr. 72. Sgt. Welch affirmed that Employee explained that there was an overlap in shifts, and at the time of the investigated misconduct, Employee was working a midnight tour. Sgt. Welch agreed that the evening and midnight shifts "overlap by several hours, between the midnight roll-call and the evening checkoff." Tr. 73. Sgt. Welch affirmed that Employee explained in his interview that his apartment was one or two blocks from the station, and at times during the overlap he would go home to take a lunch break and engage with Ms. J. Tr. 74. Sgt. Welch

agreed that his investigation uncovered that Employee only took these breaks during the overlap period from October 2021 through March 2022. Tr. 74. Sgt. Welch affirmed that his investigation started at the end of 2023 and concluded on January 6, 2024, so the instances of misconduct occurred approximately three (3) years prior to the conclusion of his investigation. Tr. 75-76.

Sgt. Welch noted that his investigation did not reveal any instances from October 2021 to March 2022 where Employee missed a call for service. Sgt. Welch affirmed that Ms. J. advised him that Employee would come home approximately four (4) to five (5) times per week. Tr. 76. Sgt. Welch testified that in their separate interviews, Employee and Ms. J. offered varying times as to how frequent Employee came home to engage in sexual intercourse with Ms. J. Sgt. Welch testified that this is why he put an approximate frequency in his report. Tr. 78-79. Sgt. Welch testified that in his last interview with Employee, Employee stated that he had intercourse with Ms. J. Thursdays, Fridays, and sometimes Saturdays. Sgt. Welch stated that Thursdays and Fridays would be two days. Tr. 80.

On redirect examination, Sgt. Welch affirmed that Employee admitted to having sex on duty while at his home with Ms. J. on multiple occasions during a six (6) month time period. Tr. 81-82. Sgt. Welch agreed that when shifts overlap, officers are not allowed to do whatever they want. Tr. 83. He agreed that the requirement that an officer notify dispatch even if they go on lunch break applies even when they are in an overlap between shifts. Tr. 83.

Sgt. Welch affirmed to the Panel that this was not an attendance fraud case. He agreed that if he was investigating serious misconduct that any new additional allegation that came forward while conducting an investigation would also be investigated. Tr. 85. Sgt. Welch testified that he did not pull a call for service history or any roll call to show what Employee's assignments were during the six (6) month period that Employee was engaged in this misconduct. He affirmed that looking back, they should have been included in his investigation. Tr. 88-89. Sgt. Welch further affirmed to the Panel that many officers request a lunch break during their shift.

J.J. ("Ms. J.") – Tr. pp. 94-118

Ms. J. testified that Employee is the father of her twins. She affirmed that at one time they were in a romantic relationship. Tr. 94. Ms. J. testified that she stayed at Employee's house one (1) or two (2) days a week, or sometimes the full week. She noted that she started staying at Employee's house shortly after she became pregnant with their twins, in August of 2021, and stopped staying at his house after she had the children in April 2022. Tr. 95-96. Ms. J. testified that Employee's house was located on Wisconsin Avenue approximately three (3) blocks from the police station where Employee worked. Tr. 96.

Ms. J. testified that Employee would come home during his shift and bring her food sometimes. Ms. J. further noted that most times he came back with or without food and played video games for a little while or engaged in intercourse with her. Ms. J. stated that most nights, Employee came home. Tr. 97. Ms. J. noted that the length of time that Employee stayed home varied. She indicated that sometimes he rushed back out and other times he would stay just long enough to eat. Tr. 98. She further cited that at other times he would stay home for a few hours. She testified that the longest amount of time that Employee stayed home was approximately two (2) hours but added that she would often fall asleep, so she was not sure of his departure time. Ms. J. testified that they would engage in intercourse approximately two (2) to three (3) times a week while Employee was on duty. Tr. 98-99. Ms. J. indicated that Employee did not stay home for long periods all the time. She testified that, from what

she could tell, it seemed like he would leave if “a call came through or something.” Tr. 100. She testified that when Employee came to the house, he was dressed in full uniform with a police radio. Tr. 100-101.

Ms. J. indicated that Employee played video games most times he came home and would play for approximately twenty (20) minutes to two (2) hours. Tr. 102. She testified that he would leave for work around 8:10 and come back before midnight.

On cross-examination, Ms. J. affirmed that she also stayed at Employee’s house on the days that he was not working. She further affirmed that because she fell asleep when Employee came home, she could not be certain of his departure time. She also agreed that at times Employee would only be home long enough to drop off food. Tr. 105.

When questioned by the Panel, Ms. J. testified that she became pregnant in August 2021 but did not start staying with Employee until October 2021, when she started getting sick. She noted that she stopped staying with Employee shortly before she had the children in April of 2022. Tr. 106. She testified that she stopped staying with Employee because he asked her to move in with him, then seemed on the fence about it. She testified that in May of 2022, he dropped her off at her apartment and “disappeared.” Ms. J. noted that shortly thereafter, Employee remarried his ex-wife. Tr. 107-108. Ms. J. testified that approximately one (1) year later he resurfaced and they became involved in a custody battle. Tr. 108. Ms. J. noted that she was aware that Employee was breaking a rule when he came home on duty. Tr. 115-116.

Employee’s Case-in-Chief

Employee Tr. Pp. 176-227

Employee testified that he has been employed with MPD since July 29, 2020, and was assigned to the Second District (“2D”). Tr. 176-178. Employee stated that after he finalized his divorce in August 2021, he met Ms. J. around this time. Employee testified that during the time period in question, it was a bad time for him mentally. He testified that his dad was sick, and he was by himself during the pandemic. Tr. 179-180. He noted that he tried to “deal with things by myself and that’s why I ended up in this predicament instead of realizing earlier that I should try and fix things.” Tr. 180. He further testified that he did not see his children very much. Employee indicated that it was a bad time for him, but he went to work and did his job to the best of his ability. Tr. 181.

He affirmed that his divorce was finalized in August of 2021 and that was also around the time that he met Ms. J. Tr. 181. He further affirmed that he and Ms. J. have twins together. Tr. 181-182. Employee agreed that in late 2021 and early 2022 that there were times he would go home to his apartment during the shift turnovers. He testified that his apartment at that time was one block away from the station. Employee stated that he worked the midnight tour and there were three shift changes. Tr. 182. Employee explained that a shift overlap meant that he would go to work and the evening shift would still be working until approximately two to three hours later when the shift changed. He testified that during the overlap period, officers had to wait for their vehicles to come in and that it would be roughly two (2) hours before they received their vehicles. Tr. 182-184. He testified that sometimes during the overlap period, he would go home and eat and at times engage in sexual acts with Ms. J. Employee also noted that Ms. J.’s testimony that he would be home for two hours was not accurate. He stated that at most, he was home for forty (40) minutes, which was more than the time he was

allotted, but not two (2) hours. Employee testified that he had to get back to work to get his vehicle, so he would return around that time. Tr. 185. Employee noted that there were no times when a supervisor was looking for him, calling him over his radio, or trying to determine his location. Employee stated that the walk from his apartment to the station was three minutes. Tr. 186.

Employee affirmed that he understood the seriousness of his conduct and the allegations in this matter. Tr. 187. Employee acknowledged that he made a mistake and it was in bad judgment. Tr. 187-188. Her further acknowledged that he is in a better place now because he had his family back and his kids were doing great. Tr. 188.

On cross-examination, Employee testified regarding his patrol area and affirmed that he was assigned a particular area to patrol for his shift. Tr. 213. Employee affirmed that he was assigned to PSA 206 during the relevant time period, and his residence was in PSA 204. Tr. 213. Employee agreed that he was supposed to remain in PSA 206 while he was on duty, and patrol in that area. Tr. 214. Employee affirmed that he told Internal Affairs that there were times when he was at home for a 45-minute period, which exceeds the amount of time that he was allowed for lunch break. He further agreed that when he left work to go home, he did not notify dispatch, command staff, or an official. Tr. 215-216. Employee noted that he would clock in by going to roll call, and at some point after, he would walk to his personal residence. He testified that this occurred approximately two (2) or three (3) times a week, but he could not recall the exact number of times. Tr. 218. Employee further affirmed that there were times that he left work and engaged in intercourse with Ms. J. Tr. 219-220. He also noted that at times he would stop at Giant grocery store or CVS pharmacy to get food and bring it home. Tr. 221-222. He testified that he would spend approximately seven to ten minutes at one of these stores. He affirmed that he knew that he was breaking the rules by going home without informing his official and agreed it would take him longer to respond to an emergency while he was at home Tr. 223-226. Employee testified that he regrets his actions. Tr. 227.

Panel Findings

The Panel made the following findings of fact based on their review of the evidence presented at the hearing. The Panel found the following:¹⁰

1. Officer [Employee] was appointed to the Metropolitan Police Department on August 7, 2010,¹¹ and was assigned to the Second District.
2. Officer [Employee] was served with the Notice of Adverse Action, to include the charges and specifications, on February 8, 2024. In that notice, the Department proposed to terminate his employment.
3. Officer [Employee] has no prior history of Adverse Action within the last three years.
4. Officer [Employee] received two Achievement Metals for work in the Second District during his tenure with the Department.
5. Officer [Employee] and Ms. J. met in August 2021 and began a romantic relationship. Ms. J. became pregnant and lived with Officer [Employee] during her pregnancy and gave birth to their twins in April 2022.

¹⁰ Agency's Answer, Tab 6, p. 1082 (April 9, 2025).

¹¹ Employee testified that he has been Employed with MPD since July 29, 2020, but stated in his Petition for Appeal that he has was an Officer for twelve years.

6. Between October 2021 through March 2022, Officer [Employee] while on-duty, during the shift overlap engaged in sexual acts with Ms. J., and other personal business inside his apartment approximately twice a week.
7. Officer [Employee] on multiple occasions, did not make his whereabouts known to his officials, obtain permission to depart from work to return to his residence, and did not notify the dispatcher before or while at his apartment to engage in personal business during this time period.
8. On August 25, 2023, Ms. J. contacted 2d Sergeant Nguyen and related to him information about her child custody matters with Officer [Employee].
9. On September 12, 2023, Officer [Employee] and Ms. J. were involved in an incident in Hyattsville, Maryland, at Kaiser Permanente, related to medical care involving their child.
10. On September 19, 2023, Officer [Employee] was granted a Temporary Protection Order (TPO) at DC Superior Court. Also that day, Ms. J. Filed for a TPO, but the order was denied at DC Superior Court.
11. On September 19, 2023, Officer [Employee] called for MPD assistance with child custody exchange, resulting in a report being generated for Family Disturbance with CCN 23-157-[###].
12. On September 25, 2023, MPD received a citizen complaint, identified as a jurisdictional referral, from the DC Office of Police Complaints (OPC), alleging misconduct by Officer [Employee].
13. On September 29, 2023, Incident Summary #23-003657 was generated by MPDs Internal Affairs Division as a result of the OPC referral, initiating the investigation into Officer [Employee]'s alleged misconduct. As part of this investigation, additional allegations of misconduct were identified. These additional allegations were subsequently sustained in the Final Investigative Report prepared by IAD Agent Welch. Further, the sustained allegations form the charges and specifications included in the Notice of Adverse Action served upon Officer [Employee] in this matter.
14. [Employee] accessed MPD's databases on August 31st, September 23rd, and September 29th of 2023 to view MPD reports involving Ms. [J] for court matters where he was an involved person.

The Panel reviewed the evidence and unanimously found that there was a preponderance of evidence to sustain all charges and found Employee Guilty of the charges and specifications. In reaching a determination, the Panel noted that it considered the initial plea entered into the record by Employee of "guilty with explanation." In addition to making the findings of fact, the Panel

also weighed the offenses against the relevant *Douglas* factors¹² and concluded that termination was the appropriate penalty for these offenses.¹³

ANALYSIS AND CONCLUSIONS OF LAW¹⁴

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,¹⁵ OEA has a limited role where a departmental hearing has been held. According to *Pinkard*, the D.C. Court of Appeals found that while OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the Comprehensive Merit Personnel Act (“CMPA”), in a matter where a departmental hearing has been held, The Court of Appeals concluded that:

“OEA may not substitute its judgment for that of an agency. Its review of the agency’s 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,

¹² *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee’s past disciplinary record;
- 4) the employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5) the effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisors’ confidence in employee’s ability to perform assigned duties;
- 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- 7) consistency of the penalty with any applicable agency table of penalties;
- 8) the notoriety of the offense or its impact upon the reputation of the agency;
- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) potential for the employee’s rehabilitation;
- 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

¹³ Employee’s Petition for Appeal, pp. 644-653 (March 7, 2025)(page numbers not in the original but included for ease of reference).

¹⁴ 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”).

¹⁵ 801 A.2d 86 (D.C. 2002).

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 subject to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: “[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*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 a 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.

In this case, Employee is a member of the D.C. Metropolitan Police Department (“MPD”) and was the subject of an adverse action; MPD’s collective bargaining agreement contains language similar to that found in *Pinkard*. Employee appeared before an Adverse Action Panel, which held a hearing on October 29, 2024. Based on the documents of record, and the position of the parties as stated during the Prehearing Conference held in this matter and in the briefs submitted herein, the undersigned finds that all of the criteria noted above are met in this instant appeal. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgment for that of the Agency, and the undersigned’s review of Agency’s decision in this matter is limited to the determination of whether the Adverse Action Panel’s findings were supported by substantial evidence, whether there was harmful error, and whether the action taken was done in accordance with applicable laws or regulations.

Whether the Adverse Action Panel’s decision was supported by substantial evidence

Pursuant to *Pinkard*, the undersigned must determine whether the Adverse Action Panel’s (“Panel”) findings were supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.¹⁶ 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.¹⁷

Agency asserts that the evidence and testimony support the charges and specifications. Agency specifies that from October 2021 through March 2022, “for nearly six (6) months, Employee went to work, left in the middle of his shift, went home, had sex, and later returned to work.”¹⁸ Agency avers that “Employee would spend approximately 45 minutes at his residence and additional time walking to and from his residence, which would occasionally involve a 7 to 10 minute detour to shop at Giant or CVS.”¹⁹ Agency maintains that Employee did not let his supervisors or the dispatcher know that he

¹⁶*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).

¹⁷ *Baumgartner v. Police and Firemen’s Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987).

¹⁸ Agency’s Prehearing Statement, pp. 4, 5 (June 11, 2025).

¹⁹ Agency’s Brief, p. 6 (August 15, 2025).

was leaving work to go home, and thus abandoned his duties.²⁰ Agency notes that Employee's conduct violated MPD General Orders and impacted his ability to provide police services. Agency further indicates that Employee admitted to leaving his assigned patrol area while on duty to take a break. Thus, Agency asserts that there is substantial evidence to support the assessed charges.²¹

Agency avers that Employee's misconduct also constituted neglect of duty because Employee left the police station and during that time was not providing police services. Agency maintains that Employee's actions also constituted conduct detrimental to the reputation of MPD because General Order 120.21 prohibits conduct 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." Agency further cites that "Employee's decision to repeatedly violate MPD orders to go home to have sex on duty is indefensible. The reputations of both Employee and MPD are negatively impacted by Employee's misconduct." Agency maintains that Employee repeated his misconduct "over and over again for 23 weeks (46 known occurrences)" and thus termination was the appropriate penalty.²²

Employee asserts that Agency did not provide substantial evidence that Employee engaged in sexual activity at least twice a week, as Employee testified that he did not remember how many times and could not agree to twice a week.²³ Employee further asserts that the "Department could not point to a single instance where [Employee] missed a call for service or single instance where a supervisor was looking for [Employee] and could not find him.". Employee maintains that the alleged misconduct only occurred during the shift overlap period, when Employee had to wait for the prior shift to return with patrol cars.²⁴

Charge 1, Specification 1-Conduct Detrimental

Charge 1: Violation of General Order Series 120.21, Attachment A, Part 24, which states, *"Any 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."*

Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with Ms. [J], at least twice a week.

I find that the evidence supports Charge 1 Specification 1. In the Internal Affairs investigation and at the Adverse Action Panel Hearing, Employee admitted that he would leave work without permission and while on duty, walk to his home which was outside of his patrol area, and at times would engage in sexual acts with Ms. J. In the Involved Member Statement within the Agency's Final Investigative Report, "[Employee] recalled that during the overlap shift...[he] advised that he would take his lunch break at home. [Employee] confirmed that he did not advise the dispatcher, nor did he notify an on-duty official, at times when he took a lunch break at his apartment." Employee further "confirmed that he engaged in sexual intercourse in his apartment with Ms. [J], while on duty,

²⁰ Agency's Prehearing Statement p. 5 (June 11, 2025).

²¹ *Id.*

²² *Id.* at 6-7.

²³ Employee's Brief p. 4-5 (September 9, 2025).

²⁴ Employee's Prehearing Statement, p. 7 (May 27, 2025).

approximately twice per week. [Employee] explained that he and Ms. [J] only engage in sexual acts in his apartment during the overlap shift.”²⁵

Similarly, at the Adverse Action Hearing, Employee affirmed that in late 2021 and early 2022 that there were times he would go home to his apartment during the shift turnovers. He testified that his apartment at that time was one (1) block away from the station.²⁶ Employee noted that sometimes he would go home and eat and at times engaged in sexual acts with Ms. J. He stated that at most, he was home for forty (40) minutes, which was more than the time he was allotted.²⁷ He affirmed that he knew that he was breaking the rules by going home without informing his official and agreed it would take him longer to respond to an emergency while he was at home.²⁸

The undersigned finds that Employee’s admission that he repeatedly engaged in the misconduct described and was aware that his actions were against Agency rules is sufficient to support Charge 1. A reasonable mind would agree that an Officer leaving their duty post to engage in sexual activity, in direct violation of Agency rules and without permission would meet the standard of detrimental conduct. Thus, the undersigned finds that Agency has met its burden of proof for Charge 1, specification 1.

Charge 2, Specification 1-Failure to Obey Orders and Directives²⁹

Charge 2: Violation of General Order 120.21, Attachment A, 16, which states, “*Failure to Obey Orders and Directives issued by the Chief of Police.*”

Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. You admitted that there was no official or duty-related purpose for your presence at your home, and you failed to notify an official or the dispatcher of your whereabouts. You failed to request permission to leave your assigned patrol area from an on-duty official or the dispatcher. This misconduct is further defined as a Violation of General Order GO-PER 201.26, V, B, 12, which states, “*Members shall constantly patrol their assigned area unless otherwise directed and shall not return to the station except on official business and approved by an official.*”

Concerning Charge 2, “*Failure to Obey Orders and Directives issued by the Chief of Police*” the undersigned finds that the record contains substantial evidence to support this charge. At the Trial Board Hearing, Employee affirmed that he was assigned to Police Service Area (“PSA”) 206 during the relevant time period, and his residence was in PSA 204.³⁰ Employee agreed that he was supposed

²⁵ Agency’s Answer, Tab 1 (p 17)(page numbers not in the original been included for ease of reference).

²⁶ Tr. 182, 185

²⁷ Employee further asserts that Agency did not have substantial evidence that he engaged in sexual acts with Ms. J twice a week; however, during the internal investigation, he “confirmed that he engaged in sexual intercourse with Ms. J. twice per week” during the overlap shift. While Employee testified at the hearing that he could not remember how many times, the statement he gave during the internal investigation was closer to the time the misconduct occurred. Thus, the undersigned finds his statements during the internal investigation are sufficient to support a finding that he engaged with Ms. J. approximately twice per week. (Agency’s Answer, Tab 1, p. 17) (April 9, 2025).

²⁸ Tr. 223-226.

²⁹ The undersigned will not consider Specifications 2 through 4, under Charge 2 because these charges resulted in a five-day suspension and thus do not fall within the jurisdiction of this Office.

³⁰ Tr. 213

to remain in PSA 206 while he was on duty, and patrol in that area. Employee testified that he left his assigned duty station approximately two (2) to three (3) times a week and went home for approximately forty-five minutes to engage in personal activities, including eating lunch. While Employee asserted that there were no times when a supervisor was looking for him, calling him over his radio, or trying to determine his location, the fact remains that he was not constantly patrolling his assigned area and did not have permission to leave to report home.³¹ Thus, the undersigned finds that there is substantial evidence to support that Employee failed to obey Orders and Directives issued by the Chief of Police.

Charge 3, Specification 1-Conduct Unbecoming; Charge 4, Specification 1-Neglect of Duty

Charge 3: Violation of General Order 120.21, Attachment A, Part 11, which states, “*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee’s or agency’s ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*”

Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with Ms. [J.], at least twice a week.

Charge 4: Violation of General Order 120.21, Attachment A, 14, which states, “*Neglect of duty to which assigned, or required by rules and regulations adopted by the Department.*”

Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. This was neglectful of your duties as a patrol officer to patrol your assigned area, respond to calls for service, and assist citizens.

I similarly find that Agency had substantial evidence in the record to support Charge 3, Specification 1; and Charge 4, Specification 1. Employee admitted to his misconduct, as noted above. Employee further affirmed at the Trial Board Hearing that he was assigned a particular patrol area for his shift, and his residence was in a different patrol area. Employee affirmed that he told Internal Affairs that there were times when he was at home for a forty-five (45)-minute period, which exceeds the thirty (30) minutes that he was allotted for lunch break. He further agreed that when he left work to go home, he did not notify dispatch, command staff, or an official. Employee noted that he would clock in by going to roll-call, and approximately two (2) or three (3) times a week he would walk home after and go to his personal residence and engage in sexual acts with Ms. J. He testified that this occurred, but he could not recall the exact number of times.³² The undersigned finds that Employee’s admission is sufficient to support a finding that he neglected his duty to which he was assigned by abandoning his assigned post without permission several times over a period of six months. The undersigned further finds that there is sufficient evidence to support that abandoning his post to engage in sexual acts is conduct unbecoming of a police officer whose job duties include providing service to the community to which he is assigned. Accordingly, I have determined that there is substantial evidence to support these charges.

³¹ Tr. 186

³² Tr. 213-220.

Employee conversely asserts that despite the charges, "...the evidence presented at the Trial Board hearing confirmed that there is not a single instance where [Employee] missed a call for service or a single instance where a supervisor was looking for him and could not find him."³³ Employee further notes that the alleged misconduct only occurred during the shift overlap period, when Employee had to wait for the prior shift to return with patrol cars.³⁴ The undersigned finds that Employee's argument is misguided. Employee seems to imply that because he was fortunate enough not to miss a call for service and that no one noticed his absences, that the evidence does not support the charges. The fact that Employee was never counted as missing or missed a call for duty is more indicative of Agency's capacity to sufficiently staff its ranks and does not diminish the severity of the misconduct. Employee affirmed at the Trial Board Hearing that he knew that he was breaking the rules by going home without informing his official and agreed it would take him longer to respond to an emergency while he was at home.³⁵ Consequently, the undersigned finds that Employee's admissions of misconduct support the charges Agency assessed.

Whether there was harmful procedural error

In accordance with *Pinkard* and OEA Rule 634.6, the undersigned is required to evaluate and make a finding of whether agency committed harmful error. OEA Rule 634.6 provides that "notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless." OEA Rule 699 notes "Harmless error shall mean an error in the application of a District 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 action."

I find that Employee has not alleged any procedural errors, and accordingly, I conclude that there was no harmful procedural error in this matter.

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

Agency's actions of charging Employee with violations of MPD's General Orders was in accordance with law or applicable regulation. Employee was afforded a Hearing by an Adverse Action Panel, and had his appeal reviewed by the Chief of Police.³⁶ Further, as discussed above, the evidence supports a finding that Employee violated MPD's General Order Series, discussed above. Thus, I find that Agency's act of termination was in accordance with law or applicable regulation.

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). 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. An Agency's decision will

³³ Employee's Prehearing Statement, pp. 4-7 (May 27, 2025).

³⁴ *Id.* at 7.

³⁵ Tr. 223-227.

³⁶ Employee's Petition for Appeal, p. 672 (March 7, 2025).

not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.³⁷

Employee avers that the penalty was not in accordance with the law or applicable regulations. Employee asserts that the Employee's misconduct does not warrant termination under the Table of Penalties because the charges do not fall within a penalty tier that warrants termination. Employee also asserts that consistent with comparative discipline, Employee's misconduct warrants no more than suspension.³⁸

Employee maintains that Agency has not proved that Employee's misconduct as assessed in Charge 1-Specification 1, Charge 3-Specification 1, and Charge 4-Specification 1 were Tier 4 offenses, and thus subject to termination. Employee asserts that under the Table of Penalties, detrimental conduct, conduct unbecoming, and neglect of duty are non-categorized offenses. He notes examples of Tier 4 offenses include inappropriate contact with a victim (conduct detrimental), providing information to a suspect regarding a confidential informant (conduct unbecoming), and failing to take a sexual assault report (neglect of duty). Employee argues that by contrast, examples of a Tier 2 level offense, which is subject to a presumptive penalty of one (1) to five (5) days suspension includes leaving an assignment without authorization or failing to attend an outside jurisdiction criminal trial.³⁹ Employee suggests that his alleged misconduct is "more appropriately characterized as a Tier 2 offense under the Table of Penalties, namely leaving an assignment without authorization" or a Tier 3 offense.⁴⁰

Agency asserts that in assessing Employee's penalty, the Panel considered that Employee's misconduct was repetitive and over a period of six (6) months. Agency notes that the Panel was further swayed by Employee's testimony that he did not have a fear of being caught.⁴¹

The undersigned finds that the penalty of termination for Charges 1, 3, and 4 is supported by the relevant facts and within the range allowed by the Table of Penalties. Under the Table of Penalties found in General Order Series 120.21, Attachment A, the penalty range for 'detrimental conduct' is Tier 1 to termination; for 'conduct unbecoming' the penalty range is Tier 2 to termination; and for 'neglect of duty' the penalty range is Tier 1/2, Tier 2/3, Tier 3/termination. The Table of Penalties for "uncategorized offenses" such as those discussed above provides examples and a presumptive penalty for each tier.⁴²

Further, Section 120.21 B provides that "The following Table of Penalties Guide shall be used as specified in this order. The Table is intended to be a more specific application of the offenses listed in Part A *for the most commonly occurring misconduct*. Use of this guide shall be mandatory as applicable... However, the Chief of police, or his or her designee may, without regard to the provisions of this section, in extraordinary circumstances when confronted by unique factual situation, determine that a penalty greater than that established in the Table of Penalty shall be imposed, provided that such authority finds that, under all the circumstances of the case, the aggravating considerations outweigh

³⁷ *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).

³⁸ Employee's Petition for Appeal, Attachment 5, p. 656 (March 7, 2025).

³⁹ Employee's Prehearing Statement, p. 4 (May 27, 2025).

⁴⁰ *Id.*

⁴¹ Agency's sur reply, pp. 9-11 (October 24, 2025).

⁴² MPD General Order 120.21, Attachment A (November 22, 2022).

the mitigating considerations. Such consideration shall be set forth on the record with particularity, and such finding shall be made by a preponderance of the evidence.” (Emphasis added).

Here, the Panel reasoned that termination was appropriate for the above charges. “The Panel evaluated the significant recurrence of the misconduct specific to the Termination Tier offenses and noted that the behavior took place with regular frequency, and was done while [Employee] was on duty, and occurred over an extended period of time, namely six months.”⁴³ Thus, while Employee asserts that his misconduct is more akin to a Tier 2 offense, which has a presumptive penalty of suspension for one (1) to five (5) days, or a Tier 3 offense, which has a presumptive penalty of suspension for 11 to 30 days, the presumptive penalties do not explicitly consider repetitive misconduct, repeated over a six-month period. Thus, Employee’s conduct cannot be considered commonly occurring misconduct and accordingly does not fit neatly into the examples of misconduct provided in the Table of Penalties. Further, Chief of Police Pamela A. Smith reasoned that “[the] sustained charges are non-categorized offenses and based on the scope, repetition, intentionality, and the egregiousness of Officer [Employee’s] misconduct, I have concluded that termination is the only appropriate penalty.”⁴⁴ Thus, the record supports with particularity that the recurrence of Employee’s behavior is an aggravating factor. Accordingly, the undersigned finds that Agency’s penalty selection is not an abuse of discretion or clear error of judgment and is within the range allowed by the Table of Penalties.

Employee further avers that Agency proposed suspension days for Charge 2, Specification 1 instead of termination, despite this charge “being virtually identical” to Charges 1, 3, and 4, Specifications number 1 for which the Agency proposed termination. Employee indicates that Agency “never articulated why this analysis did not apply equally to Charge Nos. 1, 3, and 4, which charged [Employee] with the exact same conduct.”⁴⁵

Agency asserts that “Charge 2, Specification 1, relates to Employee’s repeated misconduct of leaving his patrol area and returning to his residence twice-weekly while on duty... While similar, the Conduct Unbecoming, Conduct Detrimental, and Neglect of Duty Charges address the additional fact that Employee returned home twice a week to have sex.”⁴⁶

In Charge 2, Agency assessed that Employee violated General Order 120.21, Attachment A, 16, which states, “*Failure to Obey Orders and Directives issued by the Chief of Police.*” It supported this charge with Specification 1, which states, “specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. You admitted that there was no official or duty-related purpose for your presence at your home, and you failed to notify an official or the dispatcher of your whereabouts. You failed to request permission to leave your assigned patrol area from an on-duty official or the dispatcher. This misconduct is further defined as a Violation of General Order GO-PER 201.26, V, B, 12, which states, “*Members shall constantly patrol their assigned area unless otherwise directed and shall not return to the station except on official business and approved by an official.*”

⁴³ Agency’s Answer, Tab 6, p. 1090 (April 9, 2025).

⁴⁴ Employee’s Petition for Appeal, Attachment 6, pp.671-673 (March 7, 2025).

⁴⁵ Employee’s Prehearing Statement, p. 9 (May 27, 2025).

⁴⁶ Agency’s sur reply, pp. 8-9 (October 24, 2025).

The Panel articulated that it determined suspension days based on the amount of visits he had with Ms. J. The Panel provided the following analysis to support the penalty of suspension:

“The Panel estimated the misconduct took place twice per week, over the period of 26 weeks, with testimony from [Employee] ‘there were times we didn’t even see each other... Three weeks at a time,’ from which the Panel reduced three weeks from the count...” Thus, in assessing the penalty of a 46-day suspension, “[t]he Panel subtracted the 3 weeks [Employee] testified to there being a period where visits did not occur. Subsequently, the Panel counted 26 weeks, minus 3 weeks, leaving 23 weeks of visits occurring 2 times per week, for a total of 46 visits, conservatively. As such, the Panel recommended one day of suspension for each visit, violation”⁴⁷ (Agency’s Answer. (Panel Findings under Douglas Factor 7).

Based on this analysis, it appears that Agency deduced that Employee only went home during the times Ms. J. was present. Thus, while Charge 2 is similar to Charges 1, 3, and 4, Charge 2 only considers Employee’s misconduct of traveling home, instead of constantly patrolling his assigned area, and does not consider his sexual engagement with Ms. J. Specification 1 supports this notion as it states, “specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week...” but does not include any reference to Employee engaging in sexual intercourse with Ms. J. Thus, while similar, Charge 2 does not consider the additional misconduct of having sex while on duty. Accordingly, I find that Charge 2, specification 1, can reasonably warrant a lesser penalty. Agency assessed one day of suspension for each visit home, which falls within the Tier 3 aggravated penalty range of 30-day suspension to termination. Accordingly, I find that the Penalty for Charge 2, specification 1, is supported by the evidence and within the range allowed by the Table of Penalties.⁴⁸

Douglas Factors

Employee argues that Agency’s action of termination was improper because Agency failed to properly analyze and weigh the *Douglas* factors and that the penalty of termination was “outside of the tolerable limits of reasonableness.”⁴⁹ As noted in *Douglas*, the question is whether “managerial judgment has been properly exercised within the tolerable limits of reasonableness.”⁵⁰ It must be clear that agency “conscientiously consider[ed] the relevant factors and did strike a responsible balance within tolerable limits of reasonableness.”⁵¹

I find that Agency’s analysis for *Douglas* factors 1, 2, 3, 4, 5, 8, 9, and 11 is well-reasoned, supported by the evidence, and is within the tolerable limits of reasonableness. While Employee may

⁴⁷ Agency’s Answer to the Petition for Appeal, p. 548 (April 9, 2025).

⁴⁸ MPD General Order 120.21, Attachment A (November 22, 2022).

⁴⁹ Employee’s Prehearing Statement, p. 10 (May 27, 2025).

⁵⁰ *Douglas v. Veterans Administration*, 5 M.S.P.R. at 329.

⁵¹ See. *Alphonso Bryant v. Office of Employee Appeals*, Memorandum Opinion and Order, Civil Action No.: 2009 CA 006180, citing *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985) (quoting *Douglas v. Veterans Administration*, 5 M.S.P.R. at 332-33)

not agree with the analysis and conclusions reached by Agency, this alone is not sufficient to overturn Agency's findings concerning these factors.

Disparate Treatment

Douglas Factor 6 requires an assessment of the consistency of the Penalty with those imposed upon other Employees of the same or similar offense. The Panel held this to be a neutral factor. Employee asserts that comparative discipline reflected that other officers with similar charges were not terminated. Employee notes that he "presented a spreadsheet of all the discipline imposed by the Department for the past three years, which showed that there was not a single case in which neglect of duty resulted in termination."⁵² Employee further asserts that a comparable case involved a detective visiting another detective's residence on two occasions to engage in sexual intercourse while on duty. Employee asserts that this detective received a twelve (12) day suspension.⁵³

In assessing *Douglas* factor 6 and the comparative discipline cases, the Panel concluded that ... "no case solely aligned with the instant case such that it was to be given more consideration than another." The Panel further reasoned that it "evaluated the significant recurrence of the misconduct specific to the Termination Tier offenses and noted that the behavior took place with a regular frequency, was done while [Employee] was on duty, and occurred over a specific period of time, namely six-months." The Panel indicated that it "took note of the difficulties [Employee] was experiencing in his personal life when these offenses took place, and credit[ed] his efforts to seek counseling and reconcile the relationship with his wife."⁵⁴

OEA's Board has held that [an agency must] apply practical realism to each [disciplinary] situation to ensure that employees receive fair and equitable treatment where *genuinely similar cases are presented*. (Emphasis added). It is not sufficient for an employee to simply show that other employees engaged in misconduct and that agency was aware of it, the employee must also show that the circumstances surrounding the misconduct are *substantially similar* to his own. Normally, in order to show disparate treatment, the employee must demonstrate that he or she worked in the same organizational unit as the comparison employees and that they were subject to [disparate] discipline by the same supervisor [for the same offense] within the same general period.⁵⁵

Here Employee and Agency presented several comparator employees; however, Employee has not shown that both Employee and the comparator employees were disciplined by the same supervisor, for the same offense. Further, none of the comparators had repeated their misconduct weekly over a period of approximately six months. The comparator whose charged misconduct was most aligned with Employee's misconduct engaged in sexual intercourse while on duty two times and was suspended for twelve days. In comparison, Employee was found to have traveled home while on duty approximately 46 times; thus, this misconduct is not *substantially similar*. Further, while Employee presented a spreadsheet of comparators charged with misconduct resulting from adverse actions from 2021 to 2023, it is not apparent from this spreadsheet that the charged Employee traveled outside of their PSA without permission while on duty and engaged in sexual intercourse. Accordingly, the

⁵² Employee's Brief, p. 18 (September 9, 2025).

⁵³ *Id.*

⁵⁴ Agency's Answer, Tab 6, p. 1090 (April 9, 2025).

⁵⁵ *Employee v. Metropolitan Police Department*, OEA Matter No. 1601-0035-25 (November 12, 2025) (*Citing Jordan v Metropolitan Police Department*, OEA Matter No. 1601-0285-94, Opinion and Order on Petition for Review (September 29, 1995)).

comparator employees' misconduct cannot be determined to be *substantially similar* to Employee's misconduct.⁵⁶ Further, while the majority of the comparators presented in the spreadsheet received suspension days, some comparators were terminated including for failure to take police action, and overlapping hours, suggesting that termination can be a penalty for Neglect of Duty under some circumstances. Thus, the undersigned finds that Employee has not met the burden discussed above to shift the burden to Agency to produce evidence that establishes a legitimate reason for imposing a different penalty than the comparable employees received. Accordingly, the undersigned further finds that Employee has not provided sufficient evidence to support a finding of disparate treatment in the instant matter.

Douglas factor 10 evaluates an Employee's potential for rehabilitation. Agency found this factor to be aggravating. Agency asserts that "Employee engaged in the misconduct freely and repeatedly, with full knowledge that he was violating MPD's rules."⁵⁷ The Panel assessed that Employee cannot be rehabilitated because he "engaged in this intentional misconduct freely, and continued to engage without fear of being caught." Agency asserts that due to the "prolonged involvement in misconduct of this magnitude" that Employee cannot be reformed.⁵⁸

Employee asserts that Agency misapplied *Douglas* Factor 10 because the misconduct occurred several years ago, and Employee continued to work after the misconduct, with no additional disciplinary issues, and thus he has already been rehabilitated. Employee avers that this factor should be mitigating because "...no actual impact on [Employee's] ability to perform his duties has resulted or is likely to result in the future from the past conduct at issue."⁵⁹

As noted in *Douglas*, the question is whether "managerial judgment has been properly exercised within the tolerable limits of reasonableness."⁶⁰ It must be clear that agency "conscientiously consider[ed] the relevant factors and did strike a responsible balance within tolerable limits of reasonableness."⁶¹ The undersigned finds that Agency's managerial judgment is within tolerable limits of reasonableness in finding that *Douglas* factor 10 is aggravating. Employee asserts that he has been rehabilitated as evidenced by his continued employment as an MPD officer for years after the misconduct was discovered, his participation in therapy, and reconciliation with his wife.⁶² The Panel noted under *Douglas* factor 10 that it considered the recurrence of the misconduct for months and Employee's admission that he had no fear of being caught in assessing that Employee "cannot be permitted to continue serving the community in a position of trust."⁶³ While it is honorable that Employee has taken accountability for his actions, has not received further discipline outside of this misconduct and has participated in measures of self-help, Agency may still reasonably establish that Employee's actions preclude him from further serving in a position of trust.⁶⁴ Thus, the record supports Agency's assessment that this factor is aggravating.

⁵⁶ Employee's Petition for Appeal, Exhibit, 5p. 199-216 (March 7, 2025).

⁵⁷ Agency's sur reply (October 24, 2025).

⁵⁸ Agency's Answer, Tab 6 pp. 1092-1093 (April 9, 2025).

⁵⁹ Employee's Brief, p. 14 (September 9, 2025).

⁶⁰ *Douglas v. Veterans Administration*, 5 M.S.P.R. at 329.

⁶¹ See. *Alphonso Bryant v. Office of Employee Appeals*, Memorandum Opinion and Order, Civil Action No.: 2009 CA 006180, citing *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985) (quoting *Douglas v. Veterans Administration*, 5 M.S.P.R. at 332-33).

⁶² Employee's Prehearing Statement, p. 10 (May 27, 2025).

⁶³ Agency's Answer, Tab 6 pp. 1092-1093 (April 9, 2025).

⁶⁴ Employee's Prehearing Statement, p. 6 (May 27, 2025).

Based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charges were based on substantial evidence and that there was no harmful procedural error. Further, the undersigned notes that removal is within the range of penalties for the charges assessed against Employee. Accordingly, I find that termination was an appropriate penalty. Consequently, the undersigned concludes that the Agency's action should be upheld.

ORDER

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

FOR THE OFFICE:

/s/ Natiya Curtis
NATIYA CURTIS, Esq.
Administrative Judge