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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No. 1601-0046-24
v.	)	
	)	Date of Issuance: June 4, 2026
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF MOTOR VEHICLES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Legal Instrument Examiner for the District of Columbia Department of Motor Vehicles (“Agency”). On April 26, 2024, Agency issued a final notice of separation informing Employee that she would be removed from her position because she was involved in a verbal and physical altercation with another employee while on duty, in violation of 6-B District of Columbia Municipal Regulations (“DCMR”) § 1605.4(a).² As a result, Agency terminated

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

² In its proposed notice of removal, Agency explained the following:
On February 23, 2024, Employee was involved in a verbal and physical altercation with another employee, Marshall, while on duty. Employee engaged in a heated exchange with Marshall while they were both in the bathroom. Tensions rose as they both spewed derogatory remarks to each other. Another employee, Walton, who was also in the bathroom, was in the middle trying to get both employees to go their separate ways. However, while Walton tried disengaging the two employees, Employee began pushing on Walton's back and tried to engage in a physical assault by swinging her arms trying to hit Marshall. Walton was in the middle, taking the brunt force of these actions, while trying to keep them separated. Employee threatened Marshall and told her to have "her daughter come up to the DMV to fight." The

Employee.³

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 6, 2024. She contended that Agency’s adverse action was unwarranted and based on false statements. According to Employee, she did not physically assault anyone. Additionally, she argued that Agency failed to conduct a proper investigation of her complaints of harassment by the other employees. Employee reasoned that Agency’s action was discriminatory because the other employees involved in the incident were not terminated for their actions as she was. As a result, she requested that Agency’s termination action be reversed.⁴

On June 5, 2024, Agency filed its Answer to the Petition for Appeal. According to Agency, Employee engaged in a verbal and physical altercation while on duty by using derogatory language; swinging her arms trying to strike another employee; and yelling threats to an employee. Agency argued that Employee violated its Employee Handbook regarding profanity in the workplace, workplace violence, and 6-B DCMR § 1605.4(a). Consequently, it asserted that in accordance with 6-B DCMR § 1607.2(a)(15) Table of Illustrative Actions (“TIA”), the penalty for a first offense of assaulting, fighting, threatening, attempting to inflict bodily harm while on District property or while on duty ranged from a fourteen-day suspension to removal.⁵ Agency also explained that it properly considered the *Douglas*⁶ factors before reaching its decision to

heated exchange moved into the hallway where Employee continued to engage with Marshall. After being instructed to leave the building, Employee waited in the parking lot with her acquaintances for twenty minutes until Marshall exited the building. Marshall was approached and harassed while leaving the building.

³ *Petition for Appeal*, p. 20-21 (May 6, 2024).

⁴ *Id.*, 2-11.

⁵ It should be noted that Agency later referenced 6-B DCMR §§ 1607.2(a)(15) and (16) when deciding on Employee’s penalty. However, only 6-B DCMR §§ 1607.2(a)(15) is outlined in Agency’s proposed removal and its Proposing Official’s Rationale Worksheet. *Answer to the Petition on Behalf of the Department of Motor Vehicles*, Tabs 8 and 9 (June 5, 2024).

⁶ The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board (“MSPB”) in *Douglas v. Veterans Administration*, 5 M.S.P.B. 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

terminate Employee. Therefore, it requested that Employee's removal be upheld.⁷

After conducting a two-day evidentiary hearing, the OEA Administrative Judge ("AJ") issued an Initial Decision on November 12, 2025. She found that Agency failed to specifically enumerate which of the four subsections in 6-B DCMR § 1605.4(a) it used as Employee's conduct to support its adverse action.⁸ The AJ also determined that Agency failed to show that Employee physically assaulted Walton in the restroom through testimonial and documentary evidence.⁹ However, she did find that Employee engaged in a verbal altercation and used profanity.¹⁰

As for the penalty, the AJ determined that Agency could not discipline Employee under 6-B DCMR §1607.2(a)(15) because there was no physical assault. She opined that Agency could

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;

⁷ *Answer to the Petition on Behalf of the Department of Motor Vehicles*, p. 2-6 (June 5, 2024).

⁸ The AJ noted that under 6-B DCMR § 1605.4(a) – Conduct prejudicial the District of Columbia government, include: (1) Conviction of any felony; (2) Conviction of any criminal offense that is related to the employee's duties or his or her agency's mission; (3) Conduct that an employee should reasonably know is a violation of law or regulation; and (4) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects the employing agency's mission or has an otherwise identifiable nexus to the employee's position. She concluded that 6-B DCMR § 1605.4(a) is a broad provision and Agency's use of it without the specific enumeration did not satisfy the required standard of notice or the specific cause being assessed. In support of her position, the AJ cited to the *Office of the D.C. Controller v. Frost*, 638 A.2 657, 662 (D.C. 1994) which provides that "an employer is required to provide an employee, against whom an adverse action is recommended, with advance written notice stating any and all causes for which the employee is charged and the reasons, specifically in detail, for the proposed action." Additionally, the AJ noted that the OEA Board has held that when multiple charges carry different penalties, an employee must be given proper notice of the underlying charges to adequately refute them.

⁹ The AJ provided that Marshall stated that she did not witness Employee assault Walton; Employee testified that she did not assault Walton; Walton did not note in her written statement that Employee hit her; and witness West testified that she witnessed an argument but did not mention a physical assault or Employee swinging her arms. The AJ found West to be more credible than Walton, Marshall, and Employee. *Initial Decision*, p. 15-16 (November 12, 2025).

¹⁰ *Id.*, 13-17.

have relied on 6-B DCMR §1607.2(a)(16) to discipline Employee; however, Agency did not include a charge under 6-B DCMR §1607.2(a)(16) in its removal notice. Consequently, she reversed Agency's adverse action and ordered that Employee be reinstated with backpay and benefits.¹¹

Agency filed a Petition for Review with the OEA Board on December 17, 2025. It argues that the Initial Decision is not supported by substantial evidence. Specifically, Agency contends that the AJ erred in finding that it failed to provide proper notice of the charges to Employee and failed to meet its burden of proof to demonstrate that Employee engaged in conduct prejudicial to the District government under 6-B DCMR §§ 1605.4(a) and 1607.2. It also asserts that its Notice of Proposed Removal complied with all requirements of 6-B DCMR § 1618 because it informed Employee of the type of action (adverse); the nature of the action (termination); the specific conduct at issue; and how the conduct failed to meet Agency standards (Agency's zero-tolerance policy). Agency also reasoned that it met its burden to prove that Employee engaged in physical violence at work through Walton and Marshall's testimony and written statements of the assault. Additionally, it argues that there was testimony that Employee threatened Walton with bodily harm which is also included in 6-B DCMR §1607.2(a)(15). Accordingly, Agency requests that its Petition for Review be granted and that the Initial Decision be reversed.¹²

Notice

As it relates to the notice requirements, Agency included the Proposing Official Rationale Worksheet as part of its proposed termination notice. The worksheet explained that Employee violated its Employee Handbook and the DCMR as a result of her assaulting, fighting, threatening, attempting to inflict, or inflicting bodily harm while on District property or while on duty. The

¹¹ *Id.*, 16-18.

¹² *Agency's Petition for Review* (December 27, 2025).

proposed notice described Employee's conduct in detail.¹³ The notice also complied with the requirements outlined in *Frost supra* because it provided Employee with an advance written notice stating any and all causes for which the employee is charged and the detailed reasons for the proposed action.

Cause

Agency accused Employee of violating the Employee Handbook and DCMR § 1607.2(a)(15). The relevant section from the Employee Handbook provides that "profanity . . . will not be tolerated." The AJ held in her Initial Decision that because Employee admitted to the verbal altercation; several witnesses testified to the incident; and Employee used profanity – Agency had cause that Employee violated its policy regarding no profanity in the workplace.¹⁴ This Board agrees.

Employee concedes that she engaged in a verbal altercation.¹⁵ However, she argues that she did not engage in a physical altercation. The AJ held that Agency did not show that Employee physically assaulted Walton pursuant to DCMR § 1607.2(a)(15). This Board agrees with the AJ's assessment that there is not substantial evidence to show that a physical assault occurred.¹⁶ However, Agency's notice did not solely rely on a physical assault. The Initial Decision correctly outlined that in its notice of proposed removal, Agency alleged that Employee threatened Marshall.¹⁷ However, the AJ failed to consider conduct – other than a physical assault – when

¹³ *Agency's Answer to Petition on Behalf of the Department of Motor Vehicles*, Tabs 8 and 9 (June 5, 2024).

¹⁴ *Initial Decision*, p. 17 (November 12, 2025).

¹⁵ *Petition for Appeal*, p. 2 (May 6, 2024); *Agency's Answer to Petition on Behalf of the Department of Motor Vehicles*, Tab 4 (June 5, 2024); and *OEA Hearing Transcript*, p. 284 (March 26, 2025).

¹⁶ Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *Black's Law Dictionary*, Eighth Edition; *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 *Initial Decision*, p. 13 (November 12, 2025). Additionally, the Proposing Official's Rationale Worksheet cites to Agency's Employee Handbook regarding to threats of violence. *Agency's Answer to Petition on Behalf of the Department of Motor Vehicles*, Tab 9 (June 5, 2024).

rendering her ruling.

The Employee Handbook provides that the “DMV will not tolerate physical harassment, violence, or *threats of violence*, including veiled threats of harm (comments such as you better watch your back). . . . Any violation will result in disciplinary action (emphasis added).”¹⁸ Similarly, DCMR § 1607.2(a)(15),¹⁹ provides that conduct prejudicial to the District government including “[a]ssaulting, fighting, *threatening, attempting to inflict* or inflicting bodily harm while on District property or while on duty (emphasis added)” constitutes cause and warrants adverse action. There is substantial evidence in the record that Employee threatened her co-workers.

Walton’s written statement provided that Employee said that she would “knock the [expletive] out of them and “beat [Marshall] and her [expletive].”²⁰ Marshall provided in her written statement that Employee said that she would she would get her mother and she would “knock your [expletive] out.”²¹ Moreover, Witness Jasmine Hickson provided in her written statement that when she interviewed Marshall and Watson, she was told that Employee told Marshall that she would call her daughter to come to the DMV to fight her.²² Agency witness, Letitia West, testified that she heard Employee say she would “beat the bricks off [Walton].”²³ Finally, Employee conceded that during the argument she said she “would beat your [expletive].”²⁴ These are threats of violence. Consequently, Agency established that it had cause that Employee made threats while on District property or on duty.

Moreover, Agency’s notice of proposed action provides that Employee “tried to engage in

¹⁸ *Id.*, Tab 1.

¹⁹ Read in concert with DCMR § 1605.4(a).

²⁰ *Id.*, Tab 5.

²¹ *Id.*, Tab 7.

²² *Id.*, Tab 6.

²³ *OEA Hearing Transcript*, p. 161 (March 26, 2025).

²⁴ *Id.* at 286.

a physical assault by swinging her arms trying to hit Ms. Marshall.”²⁵ The record provides examples that Employee attempted to inflict bodily harm. In Walton’s written statement, she provides that Employee “was on [her] back reaching and leaning trying to swing toward Marshall.”²⁶ Similarly, Marshall described that Employee was swinging her arms and pushing Walton “acting like she was going to hit [her].”²⁷ Hickmon testified that Employee was reaching around Walton and provided in a written statement that “[Walton] expressed that [Employee] was trying to reach around her back to try to reach [Marshall].”²⁸ During her investigation, Rakonda Cobb explained that Marshall described Employee swinging toward her.²⁹ The descriptions of Employee reaching, leaning, acting like she was going to hit, and trying to swing demonstrate that Employee attempted to inflict bodily harm. Therefore, in addition to profanity and the threat of violence, the record also shows an attempt to inflict bodily harm.

Penalty

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).³⁰ According to the Court in *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there

²⁵ *Agency’s Answer to Petition on Behalf of the Department of Motor Vehicles*, Tab 8 (June 5, 2024).

²⁶ *Id.*, Tab 5.

²⁷ *Id.*, Tab 7 and *OEA Hearing Transcript*, p. 88 (March 26, 2025).

²⁸ *Agency’s Answer to Petition on Behalf of the Department of Motor Vehicles*, Tab 6 (June 5, 2024) and *OEA Hearing Transcript*, p. 196 (March 26, 2025).

²⁹ *OEA Hearing Transcript*, p. 214 (March 26, 2025).

³⁰ *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

is clear error of judgment by the agency.³¹

In DCMR § 1607.2, the Table of Illustrative Actions are provided as a guide to assist managers in determining the appropriate penalty for an agency action. The range of penalties for a first offense of threatening or attempting to inflict bodily harm, in accordance with DCMR § 1607.2(a)(15), is suspension to removal. Because removal is within the range of penalties for threatening or attempting to inflict bodily harm, Agency's penalty was appropriate.

Conclusion

There is substantial evidence that Agency adequately established that Employee used profanity, threatened bodily harm, and attempted to inflict bodily harm. The penalty of removal imposed by Agency was appropriate. Accordingly, Agency's Petition for Review is granted, and the Initial Decision is reversed.

³¹ The D.C. Court of Appeals in *Stokes* reasoned that when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but it should ensure that "managerial discretion has been legitimately invoked and properly exercised." As a result, OEA has previously held that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office. *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department and Emergency Medical Services*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011); and *Holland v. D.C. Department of Corrections*, OEA Matter No. 1601-0062-08 (April 25, 2011). Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**, and the Initial Decision is **REVERSED**.

FOR THE BOARD:

Pia Winston, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

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.