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**THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	OEA Matter No.: 1601-0029-24
EMPLOYEE, <sup>1</sup>	)	
Employee	)	
	)	Date of Issuance: February 20, 2026
v.	)	
	)	
D.C. OFFICE OF THE CHIEF	)	
MEDICAL EXAMINER,	)	NATIYA CURTIS, Esq.
Agency	)	Administrative Judge
	)	

Briana Hinton, Esq., Employee Representative  
Michele McGee, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On February 13, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Office of the Chief Medical Examiner’s (“Agency” or “OCME”) decision to terminate her from her position as a Forensic Autopsy Transport Technician, effective January 16, 2024. OEA issued a letter dated February 14, 2024, requesting Agency file an Answer on or before March 15, 2024. Agency filed its Answer to Employee’s Petition for Appeal on March 6, 2024. This matter was assigned to the undersigned Administrative Judge (“AJ”) on March 6, 2024. On March 8, 2024, I issued an Order Convening a Prehearing Conference for April 9, 2024. Prehearing Statements were due by April 2, 2024. On April 3, 2024, the parties filed a Joint Motion to Continue the Prehearing Conference and Extend Deadlines. In an Order dated April 5, 2024, the undersigned granted the motion in part, and converted the Prehearing Conference scheduled for April 9, 2024, to a Status/Discovery Conference. Both parties appeared for the Status Conference as required.

On April 9, 2024, the undersigned issued a Post-Status/Discovery Conference Order, which scheduled the submission of briefs in this matter. Agency’s brief was due by July 2, 2024, Employee’s brief was due by July 30, 2024, and Agency’s optional sur-reply was due by August 13, 2024. Agency did not submit its brief as required. Accordingly, on July 11, 2024, the undersigned issued an Order for Post-Prehearing Brief and Statement of Good Cause, which required Agency to submit its brief and a statement of good cause by July 22, 2024. On July 23, 2024, Agency submitted a Consent Motion to

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

Amend the Briefing Schedule *Nunc Pro Tunc* and contemporaneously submitted its brief. In an Order dated July 26, 2024, I granted Agency's consent motion and extended the deadlines for submission of briefs. Employee's brief was due August 26, 2024, and Agency's optional sur-reply was due by September 9, 2024. Employee submitted her brief, as required. On September 9, 2024, Agency filed a Consent Motion for Enlargement of Time to file its reply, which I granted in an Order dated September 11, 2024. Agency's sur-reply was due by September 17, 2024, which Agency submitted, as required.

Upon review of the record, I determined that an Evidentiary Hearing was warranted in this matter. Accordingly, on November 20, 2024, I issued an Order for Status Conference, scheduling a Status Conference for December 5, 2024. The parties failed to appear for the Status Conference.<sup>2</sup> Thereafter, I issued an Order on December 6, 2024, rescheduling the Status Conference for December 13, 2024. At the Status Conference, the parties discussed significant scheduling conflicts and limitations in selecting a date for the Evidentiary Hearing. On December 19, 2024, I held an additional Status Conference to further address the scheduling limitations discussed at the December 13, 2024, Status Conference, and to finalize dates for the Evidentiary Hearing.

On December 19, 2024, the undersigned issued an Order Convening an Evidentiary Hearing for April 29, 2025, and April 30, 2025.<sup>3</sup> The Evidentiary Hearing was held as scheduled. On June 13, 2025, following the receipt and review of the transcript, I issued an Order requiring the parties to submit their written closing arguments by July 16, 2025. On July 15, 2025, Agency filed a Consent Motion to Extend Deadline of the Closing Argument. I granted the Motion in an Order dated July 18, 2025, and the parties' written closing arguments were now due by August 7, 2025. Both parties submitted their closing arguments as required. 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 Agency had cause for adverse action against Employee; and
2. Whether all applicable laws, rules, and regulations were followed in the administration of the termination; and
3. If so, whether termination was an appropriate penalty under the circumstances.

#### BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence.

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<sup>2</sup> The parties noted by email that they had not received the Webex invitation.

<sup>3</sup> The parties agreed to these dates at the Prehearing Conferences held on December 13<sup>th</sup> and December 19<sup>th</sup>.

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.

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.

### SUMMARY OF TESTIMONY

On April 29, 2025, and April 30, 2025, an Evidentiary Hearing was held virtually before this Office through Webex. The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as “Tr.”) which was generated following the conclusion of the proceedings. Both Employee and Agency presented testimonial and documentary evidence during the Evidentiary Hearing to support their positions.

#### *Agency’s Case in Chief*

##### Brian Snowden (“Snowden”) Tr.15- 111

Snowden testified that he has worked for the Office of the Chief Medical Examiner (“OCME”) since December 28, 2015, and indicated that he was first hired as a Medical Examiner’s Transport Team (“METT” or “MET Team”) member and cross-trained as an autopsy assistant and transport. Tr. 15. Snowden stated that his current position is Supervisory Forensic Mortuary Technician and he manages the MET Team. He further testified that he supervised Employee. Tr. 17. Snowden noted that prior to being promoted to a manager, he worked as Employee’s colleague for approximately one (1) year prior to becoming her supervisor. Tr. 22.

Snowden testified that MET Team members are dispatched out to a scene through a paging system called ‘Everbridge’ that notifies MET Team members of the case number and scene location through their work-issued cell phone. Tr. 23-24. Snowden testified that the expectation is to respond to the notification within fifteen (15) minutes and respond to the scene within one (1) hour. Tr. 24. Snowden indicated that MET Team members drive together if they are going to pick up a decedent and are permitted to drive alone only if they are picking up specimens or records or going to the Department of Public Works (“DPW”) to fuel or wash a vehicle. Tr. 25. Snowden affirmed that the MET Team members mostly work together in teams of two (2) and testified that only in very rare circumstances would a MET Team member be sent to a scene alone. Tr. 25.

Snowden identified Agency’s Exhibit H as the METT Vehicle Accountability and Activity Log Sheet. He indicated that this log is used to note information including the date and time of the shift, the vehicle being used, the mileage for each destination and the signatures of the MET Team members using the vehicle. Tr. 27-28. Snowden affirmed that the METT Vehicle Accountability Log states that OCME vehicles are to be used for official business only. Tr. 29. Snowden affirmed that the second (2<sup>nd</sup>) page of the METT Vehicle Accountability Log is the METT Vehicle Daily checklist. Tr. 29. He affirmed that the METT vehicle daily checklist is part of the documentation that a MET Team member completes prior to taking out a vehicle. Tr. 30. He further testified that every time a vehicle is used it

must be logged on a vehicle activity accountability log sheet and that an employee should not take a vehicle without signing the vehicle out and logging it. Tr. 30-31.

Snowden affirmed that he and Employee were of equal status on the MET Team before he was promoted to manager. Tr. 33-34. He testified he instructed Employee that she could not use vehicles for personal use but could not remember if he explained why. He indicated that he remembered a conversation approximately two (2) months after Employee was hired when he instructed Employee that she could not take her vehicle home because the vehicle was not for personal use. Tr. 34-35.

Snowden identified Agency's Exhibit D as the OCME Vehicles Operations and Accountability Policy and described this policy as the rules and procedures that govern how an employee should use official OCME vehicles. Snowden affirmed that these rules and procedures were in effect in 2017 when Employee began working for Agency, and in 2023, at the time of the incident in question. Tr. 36. Snowden then identified Agency's Exhibit E as Employee's Acknowledgment of Receipt of the Vehicle Operations and Accountability Policy. He affirmed that employees sign this document to affirm that they have received this manual on use of OCME vehicles. Tr. 37-38.

Snowden affirmed that he was Employee's supervisor on August 30, 2023, going into August 31, 2023, when the incident in question occurred. Snowden testified that his work hours were technically 7:00a.m. to 3:30p.m. but he is also on call when at home. Tr. 42-43. When asked how many supervisors are physically on-site during shift three (3), which starts at 10:00 p.m., he testified that none are on site. He indicated that on August 30, 2023, into August 31, 2023, Employee was assigned to shift 3. Tr. 43. He affirmed that Employee was assigned a partner during this tour. Tr. 43-45. Snowden affirmed that Employee was involved in a motor vehicle accident during her tour and testified that she called him after the accident. Tr. 45-46. He explained that Employee noted that another vehicle hit her and that the driver had fled. Tr. 46. He further cited that Employee told him that she was not doing a decedent transport at the time of the accident. Snowden testified that he did not ask her what she was doing at the time of the accident on the initial phone call. Tr. 47. Snowden noted that the vehicle was not drivable and the vehicle was out of service for approximately three (3) months after the accident, and the MET Team operated with one (1) vehicle down. Tr. 48. Snowden affirmed that the vehicle operated by Employee required a Vehicle Accountability and Activity Log Sheet. Tr. 49.

Snowden testified that he assumed Employee was traveling with her partner at the time of the accident and affirmed that MET staff almost always travel together. He testified that the reason for this is for accountability and safety. He further clarified that if on transport, most people could not move bodies alone. Tr. 50. Snowden testified that Employee's partner informed him by phone that he was going to pick up Employee from the scene of the accident. Tr. 51.

Snowden testified that when he arrived at work the next day, he checked for a Vehicle Accountability and Activity Log sheet. Snowden identified Agency's Exhibit J as the vehicle log for the shift starting on August 30, 2023. Tr. 55. Snowden affirmed that Employee did not complete a log sheet for August 31, 2023, which was a violation of OCME policy. Tr. 55-56. Snowden testified that Employee confirmed that she did not complete a Vehicle Accountability and Activity Log Sheet. Snowden further indicated that he checked the GPS system on the vehicle involved in the accident to determine whether there were any scenes that had been paged and indicated that there were none. Tr. 56.

Snowden noted that as part of his investigation he spoke with the Deputy Medical Chief at that time, Dr. Breland, who informed him to write an incident report. Snowden testified that he then

followed up with Employee to determine where she was traveling when she was involved in the accident. Snowden cited that Employee informed him that she was traveling to CVS to purchase feminine products. Tr. 61. Snowden testified that after he completed his investigation, he lost trust in Employee because he had already spoken to her about using the vehicle while not on official business. Tr. 62-63. Snowden further testified that he told Employee quite a few times that she could not take the vehicle for personal use. Tr. 63. He further affirmed that he told staff during meetings that OCME vehicles cannot be used for personal use. Tr. 64. Snowden testified that he considered Employee's conduct to be serious because she used Agency's vehicle in violation of the District's rules at the time of the accident. Tr. 73. He affirmed that night shift employees are allowed to take breaks but should use their own vehicle or walk. Tr. 73-74.

Snowden affirmed that on June 23, 2023, Employee was disciplined for neglect of duty. Tr. 75. He testified that Employee failed to respond to an Everbridge page, as well as attempts to reach her by phone, which resulted in the investigator and a single MET Team member responding to the scene alone. When they returned to the building, they found Employee asleep under another employee's desk. Tr. 76. Snowden testified that Employee received a ten (10) day suspension without pay and was put on a Performance Improvement Plan ("PIP"). Tr. 78. Snowden indicated that one of the expectations noted in the PIP was that Employee comply with OCME rules and procedures. He affirmed that Employee violated OCME rules and procedures by using an OCME vehicle for personal use on the date in question. Tr. 80. Snowden further affirmed that the PIP specified that Employee shall operate as a two-person team and complete her quality assurance logs and all other tasks. Tr. 81. Snowden affirmed that he has not had to discipline another employee for using an OCME vehicle for personal use. Tr. 85. Snowden further affirmed that he proposed termination for Employee because he felt that there was no room for improvement. Tr. 88.

On cross-examination, Snowden testified that he never had a discussion with Employee about using an Agency vehicle for lunch, but he told Employee Agency vehicles could not be used for personal reasons. Tr. 93. Snowden testified that when he became supervisor in 2023, he did not retrain staff on vehicle policy use but reiterated in meetings what the policy was. He further noted that the MET Team completed an annual driver's authorization where employees electronically acknowledge the vehicle policy. Tr. 98. Snowden affirmed that there are no supervisors that work Tour three (3), and Employee was usually assigned to Tour three (3) because she preferred that schedule. Tr. 100.

Snowden affirmed that he had spoken to Employee several times about her vehicle use but could not confirm if there was any documentation of these conversations. Snowden affirmed that MET Team members were allowed to operate Agency vehicles alone at times, and Employee's operation of a vehicle alone was not necessarily a violation of Agency's policy. Tr. 105. Snowden testified that Employee failed to comply with the PIP because she violated the vehicle Operations and Accountability policy. Tr. 105.

On redirect examination, Snowden affirmed that the Vehicle Accountability and Operations Manual has not changed substantively during the time that Employee worked for Agency and the policy was that OCME vehicles are for official business use only. Tr. 106. Snowden affirmed that OCME staff are not permitted to take OCME vehicles to run an errand but can take their personal vehicles. Snowden testified that Employee was terminated because she violated the OCME use policy, not because she was involved in accident that was out of her control Tr. 107. Snowden affirmed that he has never taken an OCME vehicle for personal use. Tr. 108.

When asked by the undersigned what the protocol is if a MET Team Member receives an Everbridge notification while in their personal vehicle, Snowden testified that the employee would contact their partner and Snowden, depending on the location of the scene, and return back to the building. He noted that employees are not permitted to take their personal vehicles to a scene.

On redirect, Snowden affirmed that the MET Team members have one (1) hour to get to a scene, and the expectation is if paged, they will return and ride to the scene with their partner. He further testified that it is his expectation that Employee's stay in an area that is close enough for them to respond. Tr. 109-110.

Kimberly Lassiter ("Lassiter")-Tr 112-152

Lassiter testified that she has worked as an OCME employee for 27 years. Tr. 112. She further testified that she was a lead Autopsy Technician for six (6) years, and also served as Met Team Manager, the position now occupied by Snowden. Tr. 112-115. Lassiter noted that her current position is Manager of Mortuary and Forensics. Tr. 15. Lassiter indicated that she supervised Employee from approximately 2018 until April 2023. She affirmed that she had issues regarding Employee's work performance and specified that she issued informal verbal reprimands to Employee. Tr. 116. She specifically noted issues including sleeping on the job, not reporting to scenes, and unauthorized use of vehicles. Tr. 116-117. Lassiter noted that initially, she only issued informal, unofficial reprimands because she saw potential in Employee. Tr. 117.

Lassiter testified that Employee received approximately three (3) reckless driving complaints through the public complaint hotline.<sup>4</sup> Lassiter noted that she addressed Employee's use of personal vehicles at least five (5) times. Tr. 118-119. Lassiter reviewed Agency's Exhibit I as a calendar note Lassiter wrote on February 10, 2021, regarding a verbal reprimand she gave to Employee for taking an OCME vehicle to attend a doctor's appointment. Lassiter indicated that she gave Employee permission to attend the doctor's appointment but did not give her permission to use an OCME vehicle to drive to the appointment. She cited that she made Employee aware that she was taking notes. Lassiter stated that she also reiterated in a staff meeting that vehicles could not be taken for personal use. Tr. 120-123.

Lassiter further testified that she provided a formal verbal reprimand to Employee in July 2021 for refusing to follow an investigator to the next scene and noted that it is a Standard Operating Procedure to go from one scene to the other. Tr. 127. Lassiter further noted that Employee was also suspended in October 2021 for five (5) days due to traffic violations. Tr. 130. Lassiter affirmed that the OCME Vehicle Use policy has remained the same throughout her employment with OCME. She noted that employees are not allowed to take OCME vehicles to run errands or to take lunch. Tr. 137.

On cross-examination, Lassiter testified that she did not have Employee sign an acknowledgement regarding their conversations about Employee's vehicle use and noted that there were no witnesses to these meetings. Tr. 143. Lassiter testified that she was not aware of employees running lunch errands for one another using OCME vehicles. On redirect, Lassiter affirmed that once a MET Team employee is paged to a scene, the staff member logs the starting mileage when they enter a vehicle and the arriving mileage when they arrive to a scene, and when they return to OCME log the ending mileage. Lassiter further affirmed that once a MET Team member returns to OCME, and the decedent's remains have been processed, that Team members can go to lunch in their own vehicles.

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<sup>4</sup> Lassiter did not specify the year(s) these complaints were received.

When questioned by this Administrative Judge, Lassiter testified that the February 10, 2021, calendar entry was not made an official part of Employee's record. She further testified that the incident where Employee took a work vehicle to attend a doctor's appointment was also not made an official part of her record. Tr. 151.

Sasha Breland ("Breland")-Tr. 152-176

Sasha Breland testified that she worked for OCME as a Deputy Medical Examiner, for six (6) years, and in June 2021 became the Deputy Chief Medical Examiner and Medical Director. Tr. 153-155. She testified that in this role, she was second in command at OCME. Breland noted that Snowden informed her of the accident involving Employee. Tr. 155-156. Breland testified that she told Snowden to find out the details of the incident, and make sure Employee reported it in 'E-Risk' Breland further testified that she advised Snowden to find out where Employee was going at the time of the accident and whether she was transporting a decedent. Tr. 157.

Breland testified that in forming her final decision on this matter, she reviewed the proposed notice of separation and the documents attached to it, Employee's responses and the hearing officer's findings. Tr. 159-160. Breland affirmed that in the final agency decision recommending separation, she found that Employee had violated the District's and Agency's regulations and engaged in conduct prejudicial to the District government. Tr. 161. Breland testified that she determined that termination was appropriate because Employee was already on a PIP, which included a goal that she abide by the OCME Vehicle Operations and Accountability Policy and this incident was a direct violation of that policy and of the PIP. Breland further testified that Employee had been disciplined several times previously related to inappropriate operations of the vehicle, and neglect of duty and safety hazards. Tr. 162. Breland testified that she was not aware of any other staff that were taking Agency vehicles for personal use. Tr. 167.

On cross-examination, Breland testified that it was her recollection that in 2021, Employee received a reprimand because of multiple instances of Employee driving a vehicle recklessly. Breland testified that Employee received a documented corrective action for misusing OCME vehicles. Tr. 168-169. Breland affirmed that there was no documentation in Employee's formal record for using Agency vehicles for personal use. Breland affirmed that when she issued the final determination of removal, there was nothing in Employee's record noting that she violated Agency's policy by taking a vehicle for personal use. Tr. 174.

On redirect examination, Breland testified that Employee's PIP explicitly stated that she was expected to abide by Agency's policy, and the incident in question was a direct violation of her PIP. Tr. 176.

*Employee's Case-In-Chief*

Employee ("Employee")-Tr.182-235

Employee testified that on August 31, 2023, she was employed at OCME as a Forensic Autopsy Assistant. She noted that her role was to transport decedents from hospitals, scenes around the District, perform intake, and record the times from the scene and back to the building. Tr. 183. Employee indicated that she was terminated for taking an Agency vehicle for personal use, which she noted was a common practice. Employee testified that employees were not allowed to respond to a scene in their

personal vehicle and there was no way considering DC traffic that one could get back to the job, respond, get their truck, and get to a scene on time. Tr. 184.

Employee testified that on August 31, 2023, she was working the midnight shift, and had just finished logging the logbook, when she started her cycle. She testified that she told her partner she would be right back and drove on 295 North to go to the CVS, when she was hit by another vehicle between 1:00a.m. and 2:00a.m. Tr. 185. Employee indicated that she reported the accident to her supervisor immediately. Tr. 186. Employee explained that everyone used their OCME vehicles to get lunch. She noted that this practice went into effect during the Covid-19 pandemic because during that period, there was no extra time to get lunch. Employee indicated that Snowden went with her to get food prior to becoming a supervisor. Tr. 187

Employee testified that when she first started working at OCME, she was not trained on Agency's policies and practices, she just signed the paper. Tr. 187. Employee indicated that if one of them needed to run an errand, "they just used the truck and went." Employee noted that if an employee has their OCME vehicle, they can respond to a scene on time. She noted it would be difficult to come all the way back to Agency if an employee is not in an OCME vehicle because they only have one hour to get to a scene. Tr. 188-190. Employee affirmed that MET Team members do not have an official lunch hour. She testified that an employee would have to respond to a scene first and then go to lunch. Tr. 190.

Employee affirmed that she signed an acknowledgment of receipt of the OCME Vehicle Operations and Accountability policy on August 3, 2017. Tr. 191. Employee testified that she did not receive annual training on the vehicle policy. Employee affirmed that she had personal knowledge that other MET Team employees were using their OCME vehicles for personal use daily. 192, 194. Employee testified that she used her work vehicle for personal use daily and did not try to hide it. Tr. 194-195. She noted that if asked by her supervisor what her location was, she let them know that she was at the store or going to get food. Employee iterated that she never lied about her use of OCME vehicles. Employee noted that on the night of the incident, she told the truth because she did not think she was doing anything wrong, as it was common practice. Tr. 195. Employee stated that she was shocked to be terminated for her vehicle use because her managers were aware that she used OCME vehicles for personal use. Tr. 195.

When asked if she had ever been counseled on using a vehicle for personal use, Employee responded in the negative. Tr. 197. Employee testified that the meeting that Lassiter testified occurred on February 10, 2021, regarding her use of a vehicle to attend a doctor's appointment did not occur. Employee testified that Lassiter and Snowden never counseled her for using an OCME vehicle for personal use. Tr. 197. Employee indicated that when she worked with Snowden, they took lunch together and ran errands in OCME vehicles. Tr. 197-198. Employee identified Employee's Exhibit 11 as Cashapp transactions from Snowden to Employee for her to get lunch for him. Tr. 199-200.

On cross-examination, Employee testified that the MET Team took OCME vehicles for personal use from the time that she started working there in 2017 and did not utilize their personal vehicles while working. Tr. 206-212. Employee noted that Lassiter was aware of this practice. Tr. 213-214. Employee indicated that she asked Lassiter if she could use an OCME vehicle to attend a doctor's appointment because she did not have a personal vehicle at the time, and Lassiter gave her permission to do so. Employee affirmed that OCME's vehicle use policy states that vehicles are for official use only. Tr. 215. Employee affirmed that from the time she started with OCME in 2017 until her termination that the OCME vehicle use policy had not changed. Tr. 216.

Employee testified that on the evening in question, she told her partner that she would be right back but did not specifically indicate that she was leaving the building or taking an OCME vehicle. Tr. 217. Employee indicated that the Cashapp transactions between her and Snowden are times when he paid her. Employee noted that she did not have proof that Snowden knew she was taking an OCME vehicle for lunch when the Cashapp transactions occurred. Tr. 218. Employee also explained that the person who was her manager at the time she was hired was aware that the MET Team was taking OCME vehicles for personal use and knew that the MET Team could not use their personal vehicles. Employee testified that this manager was fine with the Team using OCME vehicles as long as they responded to scenes on time. Tr. 220-221.

Employee testified that she did not create a vehicle log when she went to CVS because she never made it there, so there was no information to log. Employee noted that normally, the vehicle is logged upon return to the building. Tr. 221-222. Employee noted that at the time she worked at OCME there was one log sheet for information regarding the scenes and another to log information about the vehicle. Employee cited that she did not log her trip information when she returned to work because she was terminated. Tr. 223-226. Employee affirmed that she drove her personal vehicle to work on the evening of August 30, 2023, but did not take her personal vehicle to run the errand to CVS because she could not respond to a scene in her personal vehicle. Tr. 227-228. Employee affirmed that she had been suspended before for violating OCME policy and put on a PIP. Employee indicated that she was aware that her PIP required that she comply with all OCME rules and policies. Tr. 229-230. Employee noted that the managers who put her on a PIP also witnessed her take OCME vehicles for personal use while she was on a PIP. Tr. 230.

On redirect examination, Employee testified that she went alone to CVS because she did not need assistance to buy personal products. She affirmed that sharing the reason why she was traveling to CVS to her male partner would have been embarrassing. Tr. 232. When questioned by the undersigned Administrative Judge, Employee testified that there was no log-sheet for when employees took OCME vehicles for lunch or personal errands. Tr. 234-235

Day Two (2): April 30, 2025

Latisha Robinson Porter (“Porter”) Tr. 5-60

Porter testified that she is a Forensic Mortuary Transport Technician at OCME. She further noted that she is the Vice President of NAGE R311. Porter noted that she and Employee were coworkers on the MET Team. Tr. 5-6. Porter testified that OCME’s vehicle use policy states that an employee cannot use a vehicle for personal use unless there are other circumstances created and a supervisor provides approval. Tr. 7. Porter testified that MET Team Employees do not have a designated lunch time. She noted that while they are entitled to lunch, they take their lunch when they can, or whenever there is a down time. Tr. 11.

Porter indicated that sometimes employees have to grab lunch prior to or after completing the scene but not while they are on the scene. Tr. 11. Porter stated that there are times when they have to retrieve lunch while in an OCME vehicle because they may be paged to multiple scenes. Tr. 12. Porter noted that employees do not go back to the building to retrieve their personal vehicle because they operate as a two-man team and they cannot use their personal vehicle to respond. She also explained that once they are paged to a scene, they have fifteen (15) minutes to respond to the page and an hour to respond to the scene. She added that there is only one transport team on a scene. Tr. 12.

Porter noted that when she first started working for OCME in 2017, her supervisor at that time allowed them to grab lunch in between scenes as long as employees stayed within the District. Tr. 14. Porter testified that while the Vehicle Accountability form that OCME employees are required to sign states employees will not use OCME vehicles for personal use, that policy does not align with Agency's common practice. Tr. 18. Porter testified that MET Team employees use OCME vehicles for personal use in extenuating circumstances and to get lunch. Tr. 19. Porter testified that she is aware of one other employee who was reprimanded for using an OCME vehicle for personal use, but that matter was dismissed. Tr. 36-37. She affirmed that she is aware that Employee had prior discipline. Tr. 37.

Porter testified that she has not taken an OCME vehicle for personal use but has been in a vehicle with other employees while they were on a personal errand. Tr. 40. She affirmed that she was partners with the person running the personal errand. Tr. 42. Porter confirmed that other employees have left their partner alone while working the overnight shift and taken an OCME vehicle to go somewhere. Tr. 42-43. Porter noted that she has been given a ride home in an OCME vehicle and affirmed that the OCME policy prohibits this. Tr. 44-45. Porter noted that like Fire and EMS, the MET Team do not stop operations to get lunch, they just grab lunch when they can. Tr. 59.

When questioned by the undersigned Administrative Judge, Porter testified that when an employee used an OCME vehicle to get lunch, that use was not logged on a log sheet. Tr. 59-60.

Snowden (Snowden was recalled as Employee's Witness) Tr. 61-102

Snowden testified that he became supervisor of the MT Team in April of 2023, and prior to that he was a MET Team member. Tr. 63. Snowden testified that he was trained by a senior staff member on when to use the vehicles and how to document when they transported decedents. Snowden testified that vehicle training for him included training on how to drive the vehicle, and how to fill out vehicle logs. He noted that they were not allowed to use OCME vehicles for personal errands. Tr. 66. Snowden testified that when employees took lunch, they would bring their own lunch or go to a nearby restaurant. He testified that he never used an OCME vehicle to get lunch and never went with Employee to get lunch. Tr. 67-68. Snowden noted that Employee was very giving and she would often bring him food, but he never asked her to bring him lunch. Tr. 68.

When asked about Cashapp transactions between him and Employee, Snowden indicated that Employee would ask if he had cash. He noted that he would give her cash, and Employee would Cashapp that amount back to him. Tr. 70. Snowden further indicated that he also had a friend that cooked meals, and employees would order those meals and pay him via Cashapp. Tr. 70. When asked specifically about a deposit made from him to Employee through Cashapp in 2019, he testified that he did not remember what that transaction was for. Tr. 72.

Snowden testified that he had discussions with Employee regarding her use of OCME vehicles and also sent emails to her about this issue. Tr. 74. He noted that he did not have formal discussions with Employee regarding her use of OCME vehicles. Tr. 76. Snowden affirmed that he put Employee on a PIP because she was suspended in June 2023 for ten (10) days. Tr. 78-79. Snowden affirmed that he has had to discipline one other MET Team employee for personal use of an OCME vehicle. He noted that this employee received a ticket, and after conducting an investigation determined that this employee was not on official Agency business. Tr. 80-81. Snowden affirmed that taking an OCME vehicle for lunch qualifies as personal use. Tr. 84. Snowden testified that the expectation is that an employee will get lunch on his or her own time. He noted that some hospitals have cafeterias and coffee

shops, so employees may stop there while picking up records, but noted that employees should not be using OCME vehicles to go to their favorite restaurant. Tr. 85-86.

On cross-examination, Snowden affirmed that another employee was suspended for fifteen (15) days for using an OCME vehicle for personal use. Tr. 91-92. He noted that he proposed termination for Employee because she had prior disciplinary actions. Tr. 92. When asked about Cashapp transactions between he and Employee, Snowden affirmed that those transactions occurred prior to him becoming her supervisor. Tr. 95.

Snowden affirmed that every time an employee takes out a transport van, a Vehicle Accountability and Activity Log sheet is to be completed. Tr. 97. Snowden testified that there is a checklist on the back of the vehicle log sheet that is completed before the run, and the vehicle log itself is completed during the run. He affirmed that the log has a depart time that has to be logged. He affirmed that Employee did not log her vehicle use on August 31, 2023, the date she was involved in an accident. Tr. 98.

On redirect examination, Snowden testified that he did not recall if any of Employee's prior disciplinary actions were for taking a vehicle for personal use. Tr. 99.

When questioned by the undersigned Administrative Judge, Snowden testified that he could not recall a time when OCME's vehicle use policy was ever relaxed. Snowden affirmed that there are days that are too busy to take an allotted lunch period. Tr. 101.

#### Robert Kidwell ("Kidwell") Tr. 103-118

Kidwell testified that he worked for Agency from 2017 until 2022, as a MET Team member Tr. 104. He affirmed that as part of his duties he operated an OCME vehicle. Kidwell testified that he and Employee were partners on the same shift. Tr. 105. Kidwell testified that OCME employees were advised not to use the vehicles for personal use, such as grocery shopping, and other miscellaneous tasks. He noted that he did not consider getting lunch as personal use. Tr. 107. Kidwell testified that he would use the OCME vehicle or his personal vehicles to get lunch. He also testified that it was difficult to get lunch in a personal vehicle because they did not have a conventional schedule and had to be ready to deploy to a scene within thirty minutes. He testified that if he took his personal vehicle and went to the store and got stuck in traffic, he would be delayed getting to the scene. Tr. 109. Kidwell testified that he would use his personal vehicle when they had overlapping coverage, so he was an extra person. Tr. 109. He noted that in those instances he would quickly grab lunch and come right back. Tr. 109-110. Kidwell testified that he did not have personal knowledge of an employee getting reprimanded for personal use of an OCME vehicle. Tr. 110. Kidwell affirmed that he and Employee took lunch together in OCME vehicles. 112-113.

On cross-examination, Kidwell explained that management did not remind them of the policy unless an employee was involved in an accident. Tr. 114. Kidwell affirmed that Snowden was not his supervisor during his employment on the MET Team. Tr. 115. When asked if he was disciplined for driving dangerously, Kidwell testified that the specific charges were never brought to his attention. Tr. 116-117. He noted that he was suspended but was not told why. Tr. 117. He affirmed that he received a notice of suspension which stated that he was accused of driving dangerously. He also affirmed that he was disciplined for bringing his children in his personal car to a death scene in violation of OCME policy. Tr. 117.

*Agency's Rebuttal Witness*Ronald Morris ("Morris") Tr. 134-141

Morris testified that he works for OCME as a Transport Technician. Tr. 134. He testified that he worked with Employee from 2022 to 2023. Tr. 137. He stated that his supervisor at the time instructed him that OCME vehicles were for official use only. Tr. 137-138. He indicated that Snowden told him in 2024 that the vehicles were not for personal use. Tr. 138. Morris affirmed that from 2022 to 2023 he did not take a vehicle for personal use and did not know of any staff members that used OCME vehicles for personal use. Tr. 138. He further testified that he never saw Employee take a vehicle for personal use or leave in an OCME vehicle. He affirmed that that he was never told by a supervisor that despite the vehicle use policy, it was ok to use OCME vehicles for personal use. Tr. 139.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee was hired as a Forensic Autopsy Transport Technician on July 24, 2017, which is a position in the Medical Examiner Transport Team ("METT" or "MET Team"). On August 3, 2017, Employee signed an acknowledgement that she received a copy of Agency's Vehicle Operations and Accountability Policy.<sup>5</sup> On August 31, 2023, at approximately 1:15 a.m. while traveling to CVS in an OCME vehicle, Employee was struck by another vehicle.<sup>6</sup>

Agency determined that Employee's use of an OCME vehicle to travel to CVS violated the Vehicle Operations and Accountability Policy. Thus, Agency issued an Advance Notice of Proposed Removal on October 4, 2023, which noted that removal was being proposed for conduct prejudicial to the District Government for taking a vehicle for use other than official business.<sup>7</sup> Agency cited to 6B DCMR § 1605.4(a)(3)(d)(i)(m)(n).<sup>8</sup> This matter was assigned to a Hearing Officer who issued his recommendation on January 4, 2024, upholding Agency's decision to terminate Employee.<sup>9</sup> In a Notice of Final Agency Decision dated January 16, 2024, Employee was terminated from her position as a Forensic Autopsy Support Technician effective January 16, 2024.<sup>10</sup> The action was proposed in accordance with Chapter 16 of the DPM and based on the specific cause of action of "Conduct Prejudicial to the District Government", pursuant to DPM § 1605.4, as cited above.

**Summary of Agency's Position**

On August 31, 2023, while working the overnight shift, Employee was involved in an accident while operating a District-owned Agency vehicle. Agency maintains that employee was not conducting official OCME business but instead was on a personal errand in violation of Agency's policy, which prohibits the unauthorized use of OCME vehicles. Agency maintains that Employee was aware of Agency's policy on the unauthorized use of OCME vehicles and signed an acknowledgement in August

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<sup>5</sup> Agency's Answer, p. 16 (March 6, 2024) (page numbers not in the original but included for ease of reference).

<sup>6</sup> *Id.* at p. 4

<sup>7</sup> *Id.* at p. 12

<sup>8</sup> DCMR §1605.4(a)(3)-conduct that employee should know is a violation of law or regulation; 1605.4: (d) Failure or refusal to follow instructions; (i) health and safety violations; (m) failure to meet performance standards; (n) inability to carry out assigned responsibilities or duties

<sup>9</sup> Employee's Petition for Appeal at p. 19 (February 13, 2024) (page numbers not in the original but included for ease of reference).

<sup>10</sup> *Id.* at p. 7.

2017 that she received a copy of the OCME Vehicle Operations and Accountability Policy. Agency further asserts that Employee was trained regarding the use of District Government vehicles. Agency maintains that OCME policy also required that OCME technicians operate as a team, but Employee went out alone the night in question and left her partner alone at Agency.<sup>11</sup>

Agency asserts that Employee was placed on a PIP in June 2023, and that one of her S.M.A.R.T. goals was to comply with OCME's Vehicle Operations and Accountability Policy. Agency avers that OCME's policy requires employees to log all vehicle use, and state the purpose, mileage, and other information about the trip; however, no entry existed for Employee's travel on August 31, 2023. Agency asserts that Employee "freely admits that she was driving the agency vehicle solely for personal use..." despite knowing that such use was against Agency's policy and procedures.<sup>12</sup>

### **Summary of Employee's Position**

Employee maintains that Agency did not have cause for adverse action against her because Agency accepted and encouraged employees to use work vehicles for personal errands.<sup>13</sup> Employee asserts that on August 31, 2023, she took an OCME vehicle to CVS to procure necessary personal care items.<sup>14</sup> Employee notes that it was customary for OCME employees to use vehicles during downtime for personal errands such as getting lunch and snacks for each other, as long as they were on time to a scene when paged. Employee maintains that other employees have not been fired for similar conduct.<sup>15</sup> Employee avers that even her supervisor Brian Snowden would send her cash payments for lunch runs. Employee asserts that while she signed the OCME Vehicle Operations and Accountability Policy Acknowledgment Form in 2017, she did not reasonably know that her actions were improper because Agency has accepted and encouraged employees to utilize work vehicles for personal errands. Employee argues that because Agency had a practice that contravened its own policy, and her actions aligned with this common practice, that Agency did not have cause to discipline her.<sup>16</sup>

Employee further maintains that she was never counseled about using a vehicle to attend a doctor's appointment, despite Lassiter's assertion that she received a prior verbal warning about similar conduct.<sup>17</sup> She further asserts that Agency considered a prior offense that occurred in March 2019 in assessing the *Douglas* factors, which was beyond the three (3) year look back period permitted in assessing prior misconduct.<sup>18</sup>

### **ANALYSIS**<sup>19</sup>

#### ***Whether Agency had cause for adverse action***

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<sup>11</sup> Agency's Answer, p. 1, 3 (March 6, 2024)

<sup>12</sup> *Id.* at pp. 2-3; 4-5

<sup>13</sup> Employee's Brief p. 4 (August 26, 2024)

<sup>14</sup> Tr. 184.

<sup>15</sup> Prehearing Statement, p. 2 (May 28, 2024)

<sup>16</sup> Employee's Brief, pp 4-5 (August 26, 2024)

<sup>17</sup> Tr. 197; 215

<sup>18</sup> Employee's Brief, pp. 7-8 (August 26, 2024)

<sup>19</sup> 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").

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, *or suspension for 10 days or more* (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. (*Emphasis added*).

Pursuant to OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Additionally, DPM § 1601.7 provides that “Each agency head and personnel authority has the obligation to and shall ensure that corrective and adverse actions are only taken when an employee does not meet or violates established performance or conduct standards....”<sup>20</sup> Accordingly, disciplinary actions may only be taken for cause.

OCME’s policy regarding use of its vehicles is clearly noted in its General Vehicle Operations and Accountability Policy. The policy states: “Government vehicles may only be utilized for the official government business of the District and agency.” It further states that “Vehicle operators must record vehicle usage on a Vehicle Utilization Report... The most direct route to any assignment will be used. Employees will not deviate from the shortest route for any personal errands, including meal breaks.”<sup>21</sup> This Policy further incorporates Mayor’s Order 2009-210-Government and Personal Vehicle Operators Accountability Policy, which outlines the appropriate use of District-owned vehicles. Employee signed an Acknowledgement of Receipt of the OCME FY2016 Vehicle Operations and Accountability Policy on August 3, 2017.<sup>22</sup> Agency noted that this policy has not changed since Employee signed the Acknowledgement in 2017.<sup>23</sup>

Employee does not dispute that Agency’s written policy prohibits personal use of OCME transport vehicles.<sup>24</sup> Employee also acknowledged that she used an OCME vehicle in the early morning on August 31, 2023, to run a personal errand, which was against Agency’s written vehicle use policy.<sup>25</sup> Thus, based on Employee’s own admission I find that Employee used an OCME vehicle to run a personal errand, in violation of OCME’s written General Vehicle Operations and Accountability Policy. Employee, however, asserts that despite the established written policy, Agency had a common practice of allowing the MET Team to use vehicles for personal use because the nature of their job required them to be on call. Employee maintains that if she used her personal vehicle to run errands or

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<sup>20</sup> DPM §1601.7(2019).

<sup>21</sup> Agency’s Answer to Petition for Appeal, p. 62 (March 6, 2024) (page numbers included for ease of reference).

<sup>22</sup> *Id.* at p. 75

<sup>23</sup> Agency’s Brief p. 2 (July 23, 2024).

<sup>24</sup> Employee’s Brief, p. 4 (August 26, 2024)

<sup>25</sup> Tr. 227-228

take lunch, for example, she might not have time to return to OCME, get a transport vehicle, and arrive on time to the scene where paged.<sup>26</sup>

In support of her argument that OCME had a practice of allowing the MET Team to take vehicles for personal use, Employee testified that she used her work vehicle for personal use daily and did not try to hide it. She noted that if her supervisors asked for her location, she would let them know if she was at the store or getting food. Employee testified that at the time of the accident, she called her supervisor and told the truth regarding the accident because she did not think she was doing anything wrong considering Agency's common practice of letting employees take vehicles for personal use.<sup>27</sup>

Employee further testified that her manager at the time she was hired did not give her express permission to use OCME vehicles for personal use, but was aware of that practice and allowed it as long as the MET Team responded to scenes on time.<sup>28</sup> Employee further asserted that while she signed the vehicle policy acknowledgement in 2017, she did not receive yearly training on the vehicle use policy and was never reprimanded by Lassiter or Snowden for taking a vehicle for personal use, despite both Snowden and Lassiter's testimony that she was counseled not to take vehicles for personal use.<sup>29</sup>

In further support of her assertions, Employee elicited testimony from two OCME employees, Porter and Kidwell. Both Porter and Kidwell testified that employees were allowed to take OCME vehicles to get lunch, the rationale being that they could be called to a scene at any moment.<sup>30</sup>

Agency maintains that there was no practice of circumventing OCME's and the District's established policy regarding vehicle use. In support of its assertions, Agency elicited testimony from Employee's most recent supervisor Snowden and a past supervisor, Lassiter, both of whom testified that Agency did not have a policy of circumventing its vehicle use policy.<sup>31</sup> Snowden testified that employees were not authorized to use the vehicles to run personal errands.<sup>32</sup> Snowden noted that the only time MET Team members are permitted to get lunch while in an OCME vehicle is if they are on official business at a hospital, and they use the hospital's facilities to get lunch.<sup>33</sup> Snowden testified that night shift employees are allowed to take breaks but should use their own vehicle or walk.<sup>34</sup>

Lassiter testified that she verbally reprimanded Employee on February 10, 2021, for using an OCME vehicle, but noted she did not formally document this reprimand. Agency presented Exhibit I, a printed Outlook daily calendar page from February 21, 2021, with Lassiter's handwritten notes, which expressly mentioned that she counseled Employee regarding use of an OCME vehicle to attend a doctor's appointment.<sup>35</sup> Employee denied that this meeting ever happened. Employee asserted that she did not have a personal vehicle and noted that Lassiter gave her permission to attend the doctor's appointment.<sup>36</sup> I find Lassiter's testimony regarding this calendar entry to be lacking in credibility. Lassiter testified that she did not officially document the verbal reprimand in writing and did not make

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<sup>26</sup> Tr. 184

<sup>27</sup> Tr. 194-195

<sup>28</sup> Tr. 220-221

<sup>29</sup> Tr. 191-192; 197

<sup>30</sup> Tr. 12, 109

<sup>31</sup> Tr. 34

<sup>32</sup> Tr. 66

<sup>33</sup> Tr. 85-86

<sup>34</sup> Tr. 73-74

<sup>35</sup> Tr. 120-123; *See also*, Agency's Brief, Exhibit A p. 59 (July 23, 2024).

<sup>36</sup> Tr. 197; 215

it an official part of Employee's record. Further, I find it difficult to substantiate that Lassiter, who is Employee's former supervisor, kept a handwritten calendar entry from February 2021, if it was not a part of Employee's official file.

While Employee asserts that the MET Team management allowed the MET Team to use OCME vehicles for personal use, the evidence as a whole does not support this assertion. Employee and Employee's witnesses Porter and Kidwell provided contradicting testimony on whether a personal errand, such as the one Employee engaged in on August 31, 2023, was permitted use of OCME vehicles. Porter stated that she witnessed OCME employees using OCME vehicles for personal errands, and that management was aware of this practice.<sup>37</sup> She further testified that she had knowledge of an employee that was suspended for driving a work vehicle home, although to her recollection, the matter was later dismissed.<sup>38</sup> Kidwell testified that OCME employees were advised *not* to use the vehicles for personal use, such as grocery shopping, and other miscellaneous tasks, contradicting both Porters' and Employee's testimony.<sup>39</sup>

Further, while Employee and these witnesses testified that a former supervisor allowed them to take OCME vehicles for personal use, their testimony suggests that retrieving lunch, and not running errands was the permitted exception to the Vehicle Use Policy. Porter testified, "So when I came on duty, when I first came on to OCME, my supervisor was Mr.[supervisor]. If you stayed within DC, he allowed you to do specific things. We didn't run like a lot of personal errands, it was mainly like if we needed to grab lunch in between scenes or something like that."<sup>40</sup> Porter further testified, "So there may be times [when] you might go from scene to scene to scene to scene. And you have to hurry up and grab something, or the investigator that you know, we've got triple scenes or double scenes coming out. You know, go ahead and grab your food now."<sup>41</sup> Employee testified regarding vehicle use during the pandemic, "[t]he vehicle was being used -everyone used the vehicle to get lunch, especially during Corona. During Corona, we had no time. We had no time to get any food, so that's when it really went into effect, like, you can use your vehicle to get lunch."<sup>42</sup> Kidwell testified that he did not count taking a vehicle for lunch as personal use.<sup>43</sup> Thus, the undersigned finds that while there may have been *passive* acceptance by a past supervisor of the MET Team members getting lunch, the record does contain evidence of consistent and widespread misuse of OCME vehicles.

Further, the evidence as a whole supports that the written policy remained in effect, even in practice. Snowden indicated that as supervisor, he instructed OCME employees on the appropriate use of vehicles, and Employee's PIP included a statement that she would comply with Agency's Vehicle Use Policy.<sup>44</sup> Both Snowden and Employee testified that each trip had to be logged at the beginning and end of each trip, including mileage and start and end times.<sup>45</sup> Yet, Porter and Employee testified that there was no way to log lunch trips or personal errands, thus the mileage and vehicle use for these trips could not be documented.<sup>46</sup> Further, the logbook that the MET Team used contained an explicit

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<sup>37</sup> Tr. 43; 59

<sup>38</sup> Tr. 35, 57

<sup>39</sup> Tr. 107

<sup>40</sup> Tr. 14

<sup>41</sup> Tr. 12

<sup>42</sup> Tr. 187

<sup>43</sup> Tr. 107

<sup>44</sup> Agency's Answer, p. 47 (March 6, 2024)(page numbers included for ease of reference).

<sup>45</sup> Tr. 27-28; 224

<sup>46</sup> Tr. 60, 234

statement that the vehicles would be used for official use only.<sup>47</sup> Additionally, Lassiter and Snowden both testified that the OCME Vehicle Use Policy was enforced. Notably, while Employee and Porter asserted that a past supervisor allowed such use, he nor any other supervisor was called to testify that personal use was permitted.

Moreover, the instant facts do not comport with Employee's rationale for why Agency would circumvent its written policy. Employee, Porter, and Kidwell testified that the rationale for allowing employees to take an OCME vehicle is to ensure that they can respond to a scene within an hour, once paged.<sup>48</sup> Employee testified that considering DC traffic, there would be no way that one could get back to the job, respond, get their truck, and get a scene on time.<sup>49</sup> Tr. 184. However, in the instant matter, Employee was not on a lunch run or personal errand during a busy day or officially engaged in OCME business. Employee was working the overnight shift and running a personal errand around 1:00a.m. when daytime factors like traffic were not a hindrance. Further, if Employee were called to a scene while she was traveling to or from CVS on the date in question, she would have to return to OCME to retrieve her partner, because as noted by Snowden and Employee, the MET Team must travel as a Team, with limited exceptions.<sup>50</sup> Further, Porter testified that from 11:30p.m. until 8:30a.m. there is only one transport team, again suggesting that Employee would have had to travel back to OCME and retrieve her partner if she was paged to a scene while running a personal errand, since they were the sole team working. Thus, Employee's rationale for why she could not use her personal vehicle to travel to CVS and return to OCME if paged do not apply to the instant facts.

While I do not doubt that the nature of the MET Teams' work is imbued with a degree of unpredictability such that set lunch times and breaks are not possible, these factors do not justify a break from Agency's policy regarding use of Agency vehicles. Thus, the undersigned finds that Agency had just cause to discipline Employee for her actions.

#### Whether Agency followed all applicable laws, rules and regulations

The undersigned finds that Agency had cause to discipline Employee based on 1605.4(a) Conduct Prejudicial to the Government, including (3) conduct that an employee should reasonably know is a violation of law or regulation and 1605.4 (d) Failure or refusal to follow instructions."<sup>51</sup> The undersigned further finds that based on the analysis and facts above, Employee did not follow instructions to adhere to Agency's Vehicle Use Policy and engaged in conduct that she knew or should have reasonably known is a violation of law or regulation.

The undersigned finds that the evidence does not support the remaining charges against Employee, and thus they cannot be sustained. In The Final Notice to Employee, Agency cited to 6B of the District of Columbia Municipal Regulations ("DCMR") and charged Employee with 1605.4(a)-Conduct that is Prejudicial to the District Government in support of its termination of Employee. Agency specifically cited to §1605.4(a)(3) "Conduct that employee should know is a violation of law or regulation"; §1605.4(d) Failure or refusal to follow instructions; (i) Health and safety violations; (m) Failure to meet performance standards; and (n) Inability to carry out assigned responsibilities or duties. The undersigned finds that Agency has not presented substantial evidence

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<sup>47</sup> Agency's Answer, Appendix B (March 6, 2024)

<sup>48</sup> Tr. 12, 109, 184, 188-189

<sup>49</sup> Tr. 184.

<sup>50</sup> Tr. 25, 184.

<sup>51</sup> DPM §1607.2(d)(1)

that Employee was terminated for her failure to meet performance standards, safety and health violations, or an inability to carry out assigned responsibilities or duties. While Agency considered the individual requirements of Employee's PIP in supporting this adverse action, Agency has not asserted or provided evidence that Employee was terminated for her failure to meet the performance standards, consistent with Chapter 14 of the District Personnel Manual ("DPM"). In fact, Employee was still on a PIP at the time of termination.<sup>52</sup> Similarly, Agency has not presented any evidence of safety and health violations or an inability to carry out assigned duties. Thus, the undersigned will not consider DPM §1605.4 (i), (m), or (n) in assessing this matter.<sup>53</sup> Accordingly, I find that Agency has not met its burden as related to the aforementioned charges under DPM §§1605.4 (i) (m) or (n).

### Whether the Penalty of Termination 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).<sup>54</sup> Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." 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. As further noted in *Love*, "...[T]he [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness."<sup>55</sup> Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."<sup>56</sup>

Here, the Table of Illustrative action notes a first occurrence for each of the supported charges noted above can include removal.<sup>57</sup> Thus, Agency's action of terminating Employee was within the range allowed by the DPM.

Employee asserts that Agency considered a past disciplinary action that was beyond the three (3) year look back period<sup>58</sup> in assessing *Douglas* Factor 3.<sup>59</sup> The undersigned finds that even without

<sup>52</sup> Agency Answer, p. 44 (March 6, 2024)

<sup>53</sup> The Hearing Officer similarly noted that he would not make factual findings regarding 6B 1605.4(d)(l)(m)(n) because these charges were not developed by the record. (Agency's Answer, p. 130)(page numbers not in the original but included for ease of reference).

<sup>54</sup> See also. *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009)

<sup>55</sup> *Love* (Citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

<sup>56</sup> *Id.* See also *Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

<sup>57</sup> DPM§ 1607.2(a)(4) and 1607.2(d)(1).

<sup>58</sup> Agency's Answer, p. 30 (March 6, 2024).

<sup>59</sup> *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;

this specific instance of discipline, Agency provided a thorough *Douglas* Factor analysis, and noted two additional past disciplinary actions, which were more recent. Thus, the undersigned finds that Agency's consideration of the *Douglas* factors and resulting penalty did not exceed the limits of reasonableness. Thus, the undersigned must leave Agency's penalty undisturbed.

ORDER

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

FOR THE OFFICE:

/s/ Natiya Curtis  
Natiya Curtis Esq.  
Administrative Judge

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- 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.