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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No. 1601-0072-22R23
	)	
v.	)	
	)	Date of Issuance: September 18, 2025
	)	
METROPOLITAN POLICE	)	
DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON REMAND

This matter was previously before the Board. Employee worked as a CCTV² Evidence Specialist with the Metropolitan Police Department (“Agency”). Employee was served with a Fifteen-Day Advanced Notice of Proposed Adverse Action based on charges of conduct prejudicial to the District government; conduct that employee should reasonably know is a violation of the law; and off-duty conduct that adversely affects the employee’s job performance or adversely affects his or her agency’s mission or has an otherwise identifiable nexus to the employee’s position.³ Agency’s notice initially proposed a thirty-day suspension but its final

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

² Closed Circuit Television.

³ Employee was charged with violating District Personnel Manual (“DPM”) Chapter 16, Sections 1605.4 (a)(3) and

decision reduced the imposed penalty to a fifteen-day suspension with seven days held in abeyance. Thereafter, Agency unilaterally rescinded the seven days held in abeyance and updated Employee's records to reflect that the final imposed discipline was an eight-day suspension. Employee served the suspension from September 6, 2022, through September 15, 2022.⁴

The Office of Employee Appeals ("OEA") Administrative Judge ("AJ") issued an Initial Decision on January 26, 2023, finding that OEA lacked jurisdiction over Employee's appeal. In support thereof, he highlighted OEA's governing statute, Title 1, Chapter 6, Subchapter VI of the D.C. Code (2001), which provided *inter alia* that an employee may appeal to this Office suspensions for ten days or more. The AJ noted that the adverse action in this case was rescinded with Employee only having suffered an eight-day suspension. Hence, the AJ concluded that at best, the current appeal constituted a corrective action. Consequently, Employee's appeal was dismissed.⁵

On Petition for Review, the OEA Board ruled that the Initial Decision was not based on substantial evidence. It provided that Employee's suspension was unilaterally reduced nearly four months after Agency issued the final notice of adverse action; there was no evidence in the record to demonstrate that Employee consented to the reduction of the proposed penalty; Agency's subsequent decision to reduce the imposed penalty after Employee filed his petition with OEA could not be used as a basis for denying jurisdiction over the current appeal; and Agency's final notice of adverse action met the threshold for jurisdiction in accordance with D.C. Code § 1-606.03(a). Therefore, the matter was remanded to the AJ for adjudication on its merits.⁶

1607.2 (a)(5).

⁴ *Answer to Petition for Appeal* (September 2, 2022).

⁵ *Initial Decision* (January 26, 2023).

⁶ *Employee v. Metropolitan Police Department*, OEA Matter No. 1601-0072-22, *Opinion and Order on Petition for Review* (June 1, 2023).

The AJ held a status conference on September 21, 2023.⁷ The parties were subsequently ordered to submit briefs addressing whether Agency complied with all applicable laws, rules, and regulations when it suspended Employee for eight days with seven days held in abeyance.⁸ Agency's brief argued that Employee was disciplined for cause because he did not dispute the underlying misconduct that formed the basis of the adverse action. According to Agency, it was undisputed that Employee violated Virginia Code § 46.2-862 (Reckless Driving) on July 13, 2015, when he was issued a Virginia Uniform Summons for driving 106 miles per hour ("mph") in a 70-mph zone. It further provided that it was undisputed that Employee was arrested on the associated contempt of court *capias* warrant by the Metropolitan Washington Airports Authority Police Department on November 11, 2015. Plus, Employee was later found guilty of reckless driving on January 27, 2016, in Smyth County District Court. Thus, it reasoned that Employee's actions constituted conduct that an employee should reasonably have known is a violation of the law and conduct prejudicial to the District government. Finally, Agency opined that the imposed suspension was warranted based on an assessment of the *Douglas* factors⁹ and the Table of Illustrative Actions. As a result, it requested that the AJ sustain Employee's suspension.¹⁰

⁷ *Order Convening a Status Conference* (July 10, 2023).

⁸ *Post-Status Conference Order* (September 21, 2023).

⁹ The factors are provided in the matter *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981). The Court held 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 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

¹⁰ *Agency's Brief* (October 20, 2023).

In response, Employee contended that his off-duty conduct did not adversely affect his job performance, trustworthiness, or Agency's mission, citing his exemplary work performance in the execution of his duties. He asserted that his suspension violated the federal statute of limitations for initiating an adverse action because the arrest occurred over seven years prior to Agency issuing its Advanced Notice of Proposed Adverse Action. Additionally, Employee believed that Agency failed in its duty to orient or train him on the reporting requirements related to arrests and criminal convictions for civilian employees. According to him, Agency's suspension action also constituted double jeopardy.¹¹

As it related to the penalty, Employee opined that Agency was not reasonable, fair, or consistent in its discipline and that it erred by failing to institute progressive discipline. He further claimed that Agency engaged in discrimination by purposefully waiting until he turned forty years old to initiate the suspension action. Lastly, Employee submitted that his off-duty conduct was not a willful violation of any law or regulation. Consequently, he requested compensation for lost time, work benefits, medical costs, and damages suffered as a result of Agency's suspension action.¹²

The AJ issued an Initial Decision on Remand on May 13, 2025. Concerning Employee's claim of double jeopardy, the AJ clarified that this legal theory was derived from the Fifth Amendment of the U.S. Constitution prohibiting repeated litigation of criminal matters involving the same or a similar offense. He noted that Agency's adverse action was a civil matter, therefore

¹¹ *Employee's Brief* (November 28, 2023).

¹² *Id.* Agency filed a sur reply brief on December 12, 2023. It disagreed with Employee's contentions and argued that his criminal conduct directly affected Agency's mission to reduce crime; double jeopardy did not apply to Employee's administrative proceeding; and suspension was within the range allowed by the Table of Illustrative Actions. Agency also contended that Employee cited to no legal authority in support of his argument regarding the federal statute of limitations; it did not become aware of Employee's misconduct until January of 2022 when the Internal Affairs Division conducted a routine check of employees; and OEA lacks jurisdiction to adjudicate Employee's discrimination claim. It reasoned that Employee was disciplined for his underlying misconduct and not his failure to report his arrest. Since Employee's actions constituted a willful violation of Virginia law, Agency provided that a charge based on violation of 6-B DCMR § 1605.4(a)(3) did not require a guilty conviction. Finally, it noted that OEA lacked the authority to grant Employee's request for financial compensation. *Agency's Reply Brief* (December 12, 2023).

this concept did not apply to the instant appeal. The AJ went on to explain that Employee may have conflated double jeopardy with the concept of res judicata or claim preclusion, which also failed because the State of Virginia was the opposing party in the criminal matter, not Agency, and because the charges in Virginia were criminal, whereas the adverse action at hand was a civil matter.¹³

He also found Employee's federal statute of limitation argument disingenuous because Agency only discovered his misconduct in 2022 after the Internal Affairs Department instituted its own investigation which ultimately led to the suspension action. Moreover, the AJ concluded that Agency's General Orders provided guidelines for all civilian employees which included the requirement that all members familiarize themselves with all governing regulations. As it related to the substantive charges, he ruled that Employee admitted to the salient facts that were the subject of the instant adverse action. Thus, it was the AJ's position that Employee's admission to the underlying conduct was sufficient to meet Agency's burden of proof. Lastly, he concluded that the imposed eight-day suspension was within the range allowed by law. Therefore, Agency's adverse action was upheld.¹⁴

Employee filed a Petition for Review with the OEA Board on July 16, 2025. He argues that Agency violated D.C. Code § 12-301 by waiting seven years to initiate discipline against him. Employee also believes that Agency ran afoul of the federal statute of limitations for enforcing government actions. He further submits that Agency committed a reversible error by failing to adhere to the requirements of Chapter 6-B, Sections 406.1, 415.3, and 415.4 of the D.C. Municipal Regulations ("DCMR"), which govern enhanced suitability screenings for District employees. As a result, Employee believes that the Initial Decision is contrary to law and requests that the Petition

¹³ *Initial Decision on Remand* (May 13, 2025).

¹⁴ *Id.*

for Review be granted.¹⁵

Agency challenges each of Employee's arguments and maintains that there is no evidence to demonstrate that he held a safety, security, or protection sensitive position such that frequent background checks were required. It further asserts that there was no statute of limitations violation in commencing the instant adverse action because both D.C. Code § 12-301 and the statutory timelines for initiating civil government actions are inapplicable to Employee's administrative discipline. Thus, Agency believes that it acted timely when it first learned of Employee's misconduct. It reiterates that Employee admitted to all of the misconduct underlying the adverse action, so the eight-day suspension was both warranted and reasonable under the circumstances. Consequently, it asks that the petition be denied.¹⁶

Cause

Pursuant to OEA Rule 631.1, 6-B DCMR Chapter 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. In this case, Employee was charged with conduct that an employee should reasonably know is a violation of law or regulation and 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.

At no point during this posture of this appeal has Employee denied that he was cited for reckless driving in Virginia on July 13, 2014; arrested on the associated capias warrant by the Metropolitan Washington Airports Authority Police Department on November 11, 2015; or found guilty of reckless driving on January 27, 2016, in Smyth County District Court. A charge of reckless driving violates Virginia Code § 46.2-862 and it reasonably follows that Employee should

¹⁵ *Petition for Review* (June 16, 2025).

¹⁶ *Agency Answer to Petition for Review* (July 15, 2025).

have known that speeding in excess of 100 miles per hour was in direct contravention of state traffic laws. Employee's misconduct was antithetical to Agency's mission of reducing crime and the fear of crime in the community. Moreover, this Office has consistently held that an employee's admission is sufficient to meet Agency's burden of proof.¹⁷ Accordingly, this Board finds that the AJ's ruling on this issue is supported by the record.

Statute of Limitations

Employee argues that Agency violated D.C. Code § 12-301 when it initiated the current adverse action approximately seven years after the 2015 acts forming the basis of this appeal. This provision of the Code addresses the timeline within which certain civil actions must be commenced for the following: recovery of lands, property, damages for injury, libel, administrator's bonds, simple contracts, and executor bonds. D.C. Code § 12-301 goes on to provide the following in pertinent part:

(a) Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

(b) This section does not apply to actions for breach or contracts for sale governed by § 28:2-725, *nor to actions brought by the District of Columbia government.* (emphasis added).

Personnel matters initiated by the District government against its employees are governed by the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code § 1-601.01 et seq. The CMPA provides its own procedures and guidelines for reviewing adverse actions initiated against District

¹⁷ *Employee v. Agency*, OEA Matter No. 1601-0047-84, 34 D.C. Reg. 804, 806 (1987); *Employee v. D.C. Fire & Emergency Medical Services Department*, OEA Matter No. 1601-0006-24 (June 12, 2025); *Employee v. D.C. Office of Unified Communications*, OEA Matter No. 1601-0005-23 (April 8, 2025); *Employee v. D.C. Fire & Emergency Medical Services Department*, OEA Matter No. 1601-0027-24 (July 10, 2024); *Employee v. Metropolitan Police Department*, OEA Matter No. 1601-0044-20 (May 27, 2021); *Employee v. Metropolitan Police Department*, OEA Matter No. 1601-0026-19 (May 6, 2020); *Employee v. Department of Corrections*, OEA Matter No. 1601-0062-08 (April 25, 2011); and *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0003-13 (September 30, 2014).

employees. Moreover, Section 12-301 explicitly excludes from its applicability actions brought by the District government. Thus, Employee's argument as to the applicability of D.C. Code § 12-301 is misplaced.

Employee also proffers that Agency violated 28 U.S.C. § 1658, which imposes a four-year timeline for initiating civil government actions. In support thereof, he highlights the holdings in *Gabelli v. Securities and Exchange Commission*, 568 U.S. 442 (2013), and *Adams v. Woods*, 6 U.S. 336 (1805) as analogous to the facts in this matter. In *Gabelli*, the United States Supreme Court addressed the federal statutory interpretation of 28 U.S.C. § 2462, which governs civil penalty enforcements actions by the U.S. government in federal court. In *Adams*, the Court addressed an action of debt as it related to the slave trade from the United States to any foreign place or country. It is clear that the cases relied upon by Employee are neither analogous nor applicable to this matter, which was initiated under the CMPA. Therefore, his assertions to the contrary are unpersuasive.¹⁸

Suitability

Next, Employee contends that Agency erred by failing to adhere to the procedures for conducting criminal background checks that would have led to the discovery of his 2015 arrest in a timely manner had Agency conducted either a yearly or biennially check. The relevant provisions of Chapter 6-B, Section 400 of the DCMR state the following:

415.3 Criminal background checks for covered positions shall
be conducted:

¹⁸ We note that D.C. Code § 5-1031 previously governed the timeline within which the Metropolitan Police Department was required to initiate adverse actions against uniformed and civilian employees after it knew or should have known of the performance or conduct supporting the action. D.C. Code § 5-1031(a-1), which outlined the ninety-day rule for members of the Metropolitan Police Department, was repealed in 2023. In its place, the D.C. Council enacted the Comprehensive Policing and Justice Reform Amendment Act of 2022, D.C. Law 24-345, § 117(a), 70 D.C. Reg. 953 (April 21, 2023). Section 301(b) of the Reform Act provides that Section 117 shall apply *retroactively* to any matter pending before any court or adjudicatory body. This means that the repeal of the ninety-day provision applies retroactively to any matter pending before Superior Court, the D.C. Court of Appeals, or this Office. (emphasis added). Section 5-1031 still applies to employees of the Fire and Emergency Medical Services Department.

- a. For appointees, within sixty (60) days following the acceptance of a conditional offer;
- b. For safety and protection sensitive employees and volunteers, at least once every two (2) years; and
- c. For security sensitive employees and volunteers, at least once every four (4) years.

415.4 Criminal background checks shall be conducted in accordance with the Metropolitan Police Department (MPD) and Federal Bureau of Investigations (FBI) policies and procedures and in an FBI-approved environment.

406.1 In addition to a general suitability screening, appointees, volunteers, and employees shall be subject to one (1) or more of the following enhanced suitability screenings, as dictated by the applicable position:

- a. Pre-employment criminal background check and
- b. Periodic criminal background check

Employee's arguments are again misdirected. Employee was initially subject to a pre-employment background check when he was hired as a CCTV Evidence Specialist on April 6, 2015.¹⁹ The events forming the basis of this suspension action did not occur until July 13, 2015, when Employee was initially cited for speeding over 100 mph in the State of Virginia. There is currently no evidence in the record to establish that Employee held a safety, security, or protection sensitive position that would have necessitated an enhanced security screening pursuant to Section 415.3. Pursuant to § 415.4, Agency was only required to conduct such a review in accordance with the procedures established by the Metropolitan Police Department.

To that end, Agency maintains that the Internal Affairs Division ("IAD") began conducting quarterly criminal checks on all civilian and sworn employees in 2022 using the LinX database.²⁰

¹⁹ See *Employee v. Metropolitan Police Department*, OEA Matter 1601-0072-22 (January 26, 2023), *Agency Answer*, Exhibit 5. See also *Agency Answer to Petition for Review* at p. 3.

²⁰ LinX, or the Law Enforcement Information Exchange, is an advanced information sharing system and analytical data warehouse containing information from participating state and local law enforcement agencies located within a regional LinX system.

It provides that IAD also verifies the information by contacting the relevant agency and also conducts a separate, independent investigation if necessary. Employee's previously unreported misconduct was not revealed until a 2022 routine check was executed for all members of the Metropolitan Police Department.²¹ Additionally, pursuant to 6-B DCMR § 416.4, Employee was required to notify his supervisor or other personnel authority within seven days of his arrest and charge with a criminal offense. His failure to disclose constituted grounds for disciplinary action.²² We, therefore, find it peculiar that Employee now relies on Agency's purported negligence as a defense to his failure to adhere to the requirements for reporting his own criminal misconduct. Moreover, OEA's scope of review of the instant suspension is limited to whether Agency's adverse action was taken for cause and whether the penalty was within the range allowed by law, to which we answer in the affirmative.²³

Conclusion

Based on the foregoing, this Board finds that the Initial Decision is based on substantial evidence.²⁴ Employee does not contest the underlying misconduct giving rise to the suspension

²¹ *Agency Answer to Petition for Review* at p. 5.

²² This regulation states that "Volunteers or employees in a covered position shall notify their supervisor and the personnel authority whenever they are arrested or charged with any criminal offense. Such notification shall occur within no more than seven (7) days of the arrest or service of a criminal complaint, or its equivalent, on the volunteer or employee. Failure to comply with this subsection shall constitute cause for disciplinary action under Chapter 16 of these regulations."

²³ Assuming *arguendo* Employee held a safety or protection sensitive position which required Agency to conduct criminal background checks biannually, he has nonetheless failed to demonstrate that it was stripped of its authority or precluded from imposing the suspension action. Employee offers no evidence to show that but for its failure to conduct a timely discovery of his capias warrant arrest, Agency would not have initiated the adverse action had it become aware of the misconduct during a biannual administrative review. Further, in *Thomas v. Barry*, 729 F.2d 1469 (D.C. Cir. 1984), the District of Columbia Circuit Court held that "[t]he general rule is that '[a] statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision.'" Nothing within the language of 6-B DCMR Sections 415.3, 415.5, or 406.1 specifies a consequence for an agency's failure to act in a timely manner. Therefore, we deem these provisions to be directory and procedural in nature, not jurisdictional.

²⁴ Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. The D.C. Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.

action, therefore Agency satisfied its burden of proof as to the charges imposed. Additionally, it did not violate the federal statute of limitations related to commencing adverse actions against District employees. Finally, an eight-day suspension was within the range of penalties allowed by law.²⁵ Consequently, Employee's petition must be denied.

²⁵ Concerning Agency's selection of the imposed penalty, OEA has relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). 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 is clear error of judgment by the agency. Under the Table of Illustrative Actions, found in 6-B § 1607.2, a first charge of 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 carries a penalty of counseling to a thirty-day suspension. A first charge of conduct that an employee should reasonably know is a violation of law or regulation is punishable via reprimand to removal.

ORDER

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

FOR THE BOARD:

Dionna Maria Lewis, Chair

Arrington L. Dixon

Lashon Adams

Jeanne Moorehead

Pia Winston

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.