

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

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No. 1601-0008-16R24
EMPLOYEE,)	OEA Matter No. 1601-0046-17R24
)	
)	Date of Issuance: September 16, 2024
v.)	
)	JOSEPH E. LIM, ESQ.
METROPOLITAN POLICE DEPARTMENT,)	SENIOR ADMINISTRATIVE JUDGE
Agency)	

Daniel Crowley, Esq. and Katelyn Clarke, Esq., Employee Representatives
Teresa Quon Hyden, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL HISTORY

On October 15, 2015, Employee, a Police Lieutenant with the Metropolitan Police Department (“MPD” or “Agency”), filed a Petition for Appeal with this Office of Employee Appeals (“OEA” or the “Office”) challenging Agency’s final decision to suspend him from employment for fifteen (15) days, for insubordination. This matter was docketed by this Office as OEA Matter No. 1601-0008-16. The matter was assigned to the undersigned Administrative Judge on December 21, 2015. I held a Prehearing Conference on March 14, 2016, wherein the parties expressed an interest in settling the matter. Periodically, the parties submitted status reports on their settlement negotiations.

On May 10, 2017, Employee filed another Petition for Appeal with this Office challenging Agency’s final decision to suspend him from employment for twenty (20) days, for making false statements, use of unnecessary force, insubordination, and inefficiency. This matter was docketed by this Office as OEA Matter No. 1601-0046-17. The matter was assigned to the undersigned Administrative Judge on July 7, 2017. At the request of the parties and for judicial efficiency, I consolidated the two matters and ordered the submission of stipulated facts and the completion of discovery by November 15, 2017.

Based on the submissions and the breakdown of settlement talks, I decided that an Evidentiary Hearing was necessary. After several postponements requested by the parties, I held an Evidentiary Hearing on January 24, 2019, and March 8, 2019. On April 29, 2019, I issued an Initial Decision (“ID”) reversing Agency’s adverse action of a fifteen (15) days suspension with regards to OEA Matter Number 1601-0008-16 while upholding Agency’s adverse action of a twenty (20) days suspension with regards to OEA Matter Number 1601-0046-17.

On June 25, 2019, Employee filed a petition for review of the OEA's decision with regard to OEA Matter No. 1601-0046-17 in Superior Court for the District of Columbia in Case No. 2019-CA-004173(MPA). On March 7, 2022, the Superior Court denied Employee's petition for review, affirming the OEA decision. Employee appealed the Superior Court's decision to the District of Columbia Court of Appeals ("DCCA") on March 7, 2022, in Case No. 22-CV-0220. On May 2, 2024, the Court of Appeals reversed the OEA's order on OEA Matter No. 1601-0046-17 and left unaltered its decision in OEA Matter No. 1601-008-16.

On July 1, 2024, the Superior Court for the District of Columbia in Case No. 2019-CA-004173(MPA) remanded the matter back to OEA to issue an order consistent with the DCCA's opinion. On August 7, 2024, Employee filed a Motion for Entry of Order asking the undersigned to issue an Initial Decision on Remand in accordance with the Court's rulings.

JURISDICTION

The Office has jurisdiction pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

Whether Agency's action to suspend Employee was for "cause", and if so, whether Agency's penalty was appropriate under the circumstances.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee, a police officer with Agency since 1990, was issued a June 15, 2015, Notice of Proposed Adverse Action charging him with failing to determine whether domestic violence has occurred and failing to obtain appropriate language translation services to limited or non-English proficient persons. Agency rendered a penalty of a 15-day suspension. Employee appealed this matter to the Office of Employee Appeals where it was docketed by this Office as OEA Matter No. 1601-0008-16.

On November 12, 2015, Employee was served with the Notice of Proposed Adverse Action for an April 16, 2015, altercation that Employee had with two men who had parked in his apartment building's parking lot. The Notice charged Employee with providing a false report regarding damage to his minivan and the circumstances that led to his dispersing Oleoresin Capsicum ("OC") Spray towards two men, using unnecessary violence towards the two men thereby escalating conflict, failing to notify on-duty members prior to taking police action failing to care for a subject in his custody after the use of force and Inefficiency as evidenced by a pattern of sustained misconduct. On April 12, 2017, Agency issued its Final Notice of Adverse Action, which reduced Employee's proposed penalty from termination to a twenty (20) days suspension. On May 10, 2017, Employee filed another Petition for Appeal with this Office challenging Agency's final decision to suspend him from employment for twenty (20) days, for making false statements, use of unnecessary force, insubordination, and inefficiency. This matter was docketed by this Office as OEA Matter No. 1601-0046-17.

At the request of the parties, I consolidated the two matters. On January 24, 2019, and March 8, 2019, I held an evidentiary hearing where I found that Agency failed to prove its charges by a preponderance of the evidence as it relates to the February 7, 2015, incident. As

for the charges and specifications related to the April 16, 2015, incident, I found there is a preponderance of the evidence that Employee is guilty of Charge 2 (Unnecessary use of Force), Charge 3 (Insubordination), and Charge 7 (Inefficiency) but that Agency failed to prove all the other charges.

In conclusion, I reversed Agency's decision to suspend Employee from his job for fifteen (15) days in the OEA Matter No. 1601-0008-16, but upheld Agency's chosen penalty of a (20) twenty-day suspension for the proven charges relating to the April 16, 2015, incident in the OEA Matter No. 1601-0046-17.

On May 2, 2024, the District of Columbia Court of Appeals reversed the twenty-day (20) suspension in the OEA Matter No. 1601-0046-17 while upholding my reversal of the fifteen (15) days suspension in the OEA Matter No. 1601-0008-16.¹ During the September 11, 2024, status conference, the parties agreed to abiding by the DCCA ruling that Employee be awarded any back pay and benefits that he lost due to the suspensions.

ORDER

It is hereby **ORDERED** that the agency action suspending Employee for twenty (20) days is **REVERSED** and Agency is directed to issue Employee the back pay to which he is entitled and restore any benefits he lost as a result of both the fifteen (15) days suspension and twenty-day (20) suspension,² no later than thirty (30) calendar days from the date this Decision becomes final.

Agency is directed to document its compliance by filing with OEA a Statement of Compliance Report no later than forty-five (45) calendar days from the date this Decision becomes final.

FOR THE OFFICE:

/s/ Joseph Lim, Esq.
JOSEPH E. LIM, ESQ.
Senior Administrative Judge

¹ *Royal v. D.C. Metropolitan Police Department*, 314 A.3d 67 (2024).

² Pursuant to *Royal v. D.C. Metropolitan Police Department*, 314 A.3d 67 (2024).