THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0019-16
MONET LILLY,	)	
Employee	)	
	)	Date of Issuance: May 1, 2017
v.	)	
	)	
METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge

Monet Lilly, Employee, *Pro se*
Andrea Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 7, 2016, Monet Lilly ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA"), challenging the Metropolitan Police Department's ("Agency" or "MPD") decision to remove her from her position as a Police Officer. Employee's removal was effective January 16, 2016. Agency filed its Answer on February 17, 2016. This matter was assigned to me on March 16, 2016.

A Prehearing Conference was held on September 9, 2016. A Post Prehearing Conference Order was issued the same day which required the parties to submit briefs addressing the issues under a *Pinkard* analysis.[1] Both parties submitted their briefs accordingly. The record is now closed.

[1] *Metropolitan Police Department v. Pinkard*, 801 A.2d 86 (D.C. 2002). Based on the collective bargaining agreement between the two parties, Employee's appeal to this Office is limited to the issues listed below in the "Issues" section.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether Agency's Adverse Action Panel's decision was supported by substantial evidence;

2. Whether there was harmful procedural error; or

3. Whether Agency's action was done in accordance with applicable laws or regulations.

FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Employee was charged with the following:

Charge No. 1: Violation of General Order Series 120.21, Attachment A, Part A-20, which reads, "Misuse of official position, or unlawful coercion of an employee for personal gain or benefit."

Specification No. 1: In that, by your own admission, you used your position as a Metropolitan Police Officer, having access to the Washington Area Law Enforcement System (WALES) and that National Crime Information Center (NCIC), to run an unauthorized and non-law enforcement inquiry on Mr. Patrick Kern's name on October 16, 2011, at 2143 hours. You also admitted having Mr. Kern's name run by an Office of Unified Communications (OUC) dispatcher, Laquenceyer Battle.

Charge No. 2: Violation of General Order 120.21, Attachment A, Part A-16, which reads: "Failure to obey orders and directives issued by the Chief of Police." This misconduct is further defined in General Order Series 302.6, Section B-2, which reads in part, "The information provided by WALES shall be for legitimate law enforcement purposes…" and in Section C-2, which reads in part, "… members shall make only those requests necessary to perform legitimate law enforcement functions."

Specification No. 1: In that, on October 16, 2011, you used your position as a MPD Officer to query the WALES/NCIC on Mr. Patrick Kern for non-law enforcement purposes.

Charge No. 3: Violation of General Order 120.21, Attachment A, Part A-25, which states, "Any conduct not specifically set forth in this order, which is prejudicial to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules regulations,

and orders relating to the discipline and performance of the force."

Specification No. 1: In that, on July 6, 2015, during your interview at the Internal Affairs Division, you admitted conducting a non-law enforcement WALES/NCIC check on October 16, 2011, for Federal Bureau of Investigations (FBI) defendant Benjamin Easley. You also admitted that you were dating Benjamin Easley at the time you queried WALES/NCIC.

At the Adverse Action Panel Hearing conducted by the MPD on September 30, 2015, Employee pleaded "Guilty with an explanation" to all three charges.[2]

Pursuant to the D.C. Court of Appeals' decision in *Metropolitan Police Department v. Pinkard*, 801 A.2d 86 (D.C. 2002), an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but rather must base his/her decision solely on the record below at the Adverse Action Panel Hearing, when all of the following conditions are met:

1. The appellant (Employee) is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;

2. The employee has been subjected to an adverse action;

3. The employee is a member of a bargaining unit covered by a Collective Bargaining Agreement;

4. The Collective Bargaining Agreement contains language essentially the same as that found in *Pinkard*, i.e.: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [i.e., Trial Board Hearing] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; and

5. At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee.[3]

Based on the documents of records and the representation of the parties as stated during the Prehearing Conference and in the briefs submitted, I find that all of the aforementioned criteria have been met. Therefore, my review is limited to the issues as set forth above in the "Issues" section of this Initial Decision.

Whether the Trial Board's decision was supported by substantial evidence.

Substantial evidence is defined as evidence that a reasonable mind could accept as

[2] *See* Agency's Answer, Tab 3, Transcript p. 9 (February 17, 2016).
[3] *Metropolitan Police Department v. Pinkard*, 801 A.2d 86 (D.C. 2002).

adequate to support a conclusion.[4] Here, the material facts are largely undisputed. After receiving testimonial evidence at the Adverse Action Hearing and Employee's guilty plea, the Adverse Action Panel ultimately found Employee guilty of misconduct on all three charges and recommended a penalty of termination for each charge. Based on these findings, Employee was issued a Final Notice of Adverse Action on November 3, 2015.[5]

Agency's decision to take adverse action against Employee is supported by substantial evidence given that Employee pleaded guilty to all three charges, albeit "with an explanation." In addition to Employee's guilty plea before the Adverse Action Panel, in her brief submitted to this Office, she further acknowledges that she made a "temporary lapse in judgment." Considering Employee's guilty pleas and her acknowledgements throughout the record, I find that Agency's decision to take adverse action against Employee is supported by substantial evidence.

Whether there was harmful procedural error.

Employee does not assert any harmful procedural errors at the administrative review level or with the Adverse Action Hearing. Accordingly, and based on the administrative record, I find that Employee was afforded the proper procedures throughout the disciplinary process.

Whether Agency's action was done in accordance with applicable laws or regulations.

Employee's brief seems to argue that the penalty of termination was not appropriate under the circumstances. In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). According to the Court in *Stokes*, OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors, and whether there is a clear error of judgment by agency. Here, the penalty of termination imposed on Employee is within the appropriate range as set forth in MPD's applicable Table of Penalties.[6] The appropriate penalty for misuse of official position, failure to obey orders and directives, and prejudicial conduct—the charges for which Employee was charged—range from a reprimand up to termination. I find that Agency properly exercised its managerial discretion by imposing a penalty of termination for the offenses in which Employee was charged. Furthermore, I find that the Panel's recommendation for removal contained a thorough analysis of the relevant *Douglas* factors.[7]

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[4] *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); *See also Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[5] Agency Answer, Tab 5 (February 17, 2016).
[6] *See* Agency's Brief, Exhibit 1, General Order PER 120.21 (Effective Date April 13, 2006) (October 20, 2016).
[7] *Douglas v. Veteran Administration*, 5 M.S.P.B. 313 (1981); *See also* Agency's Answer, Tab 4, p 26-29 (February 17, 2016).

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's decision to remove Employee from her position is **UPHELD**.

FOR THE OFFICE:

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Arien P. Cannon, Esq.
Administrative Judge