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

In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup> ,	)	OEA Matter No. 1601-0021-25
	)	
v.	)	Date of Issuance: March 23, 2026
	)	
D.C. DEPARTMENT OF TRANSPORTATION,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

Tameka Garner-Barry, Employee Representative  
Nana Bailey-Thomas, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On January 27, 2025, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Transportation’s (“DDOT” or “Agency”) decision to terminate him from his position as a Traffic Control Officer (“TCO”), effective January 3, 2025. Employee was terminated pursuant to District Personnel Manual (“DPM”) for the following charges (1) DPM §§ 1605.4(a) and 1607.2(a)(15);<sup>2</sup> and (2) DPM §§1605.4(a) and 1607.2(a)(16).<sup>3</sup> On January 28, 2025, OEA issued a Request for Agency Answer to Employee’s Petition for Appeal. Agency filed its Answer to Employee’s Petition for Appeal on February 28, 2025. This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on February 28, 2025.

Thereafter, the undersigned issued an Order on March 10, 2025, convening a Status/Prehearing Conference for April 1, 2025. Both parties were present at the scheduled conference. Thereafter, on April 4, 2025, the undersigned issued an Order Scheduling a Prehearing Conference for May 8, 2025, with Prehearing Statements due on April 28, 2025. Both parties appeared for the Prehearing Conference. Because the parties did not submit their respective

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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.

<sup>2</sup> Assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property or while on duty.

<sup>3</sup> Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay.

Prehearing Statements as required, the May 8, 2025, Prehearing Conference was continued to May 28, 2025, with Prehearing Statements due by May 16, 2025. Both parties submitted their Prehearing Statements and attended the scheduled conference as required. During the Prehearing Conference, Employee asserted that Agency violated the 90-day rule. Accordingly, on May 28, 2025, the undersigned issued a Post Status/Prehearing Conference Order requiring the parties to submit briefs addressing whether Agency complied with the service requirements of DPM §§1618.6-8 and the 90-day rule as provided in DPM § 1602.3. Agency's brief was due on June 12, 2025, and Employee's brief was due on June 26, 2025. Both parties submitted their respective briefs.

Upon review of the record, the undersigned determined that an Evidentiary Hearing was warranted in this matter. As such, the undersigned issued an Order dated July 8, 2025, scheduling an Evidentiary Hearing for July 21, 2025. The parties requested via email that the Evidentiary Hearing be rescheduled to a date in October. The undersigned required the parties to submit a Motion to Continue the Evidentiary Hearing in compliance with OEA rules. Subsequently, on July 24, 2025, Agency filed a Consent Motion to Reschedule Evidentiary Hearing. This Motion was granted in an Order dated July 31, 2025, and the Evidentiary Hearing was rescheduled for October 29, 2025. The Evidentiary Hearing proceeded on October 29, 2025, with both parties and their witnesses present. Following the receipt of the transcript for the Evidentiary Hearing, on November 20, 2025, the undersigned issued an Order requiring the parties to submit written closing arguments by December 19, 2025. Both parties have 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 complied with DPM § 1602.3 which provides that adverse actions shall commence no more than ninety (90) business days after the agency or personnel authority knew or should have known of the conduct supporting the action.
- 2) Whether Agency complied with the service requirements of DPM §§1618.6-8 when it issued the Notice of Proposed action.
- 3) Whether Employee's actions constituted cause for adverse action.
- 4) Whether the penalty of removal was appropriate under the circumstances and within the range allowed by applicable law, rules, or regulations.

## SUMMARY OF MATERIAL TESTIMONY

The following represents a summary of the relevant testimony given during the Evidentiary Hearing on October 29, 2025, as provided in the transcript (hereinafter denoted as “Tr.”) which was generated following the conclusion of the proceeding.

### *Agency’s Case in Chief*

#### James Strange (“Mr. Strange”) Tr. pgs. 12- 49

Mr. Strange is the Associate Director of Roadway Operation and Safety Division at Agency. His duties include “the management of approximately four (4) programs, which are the Traffic Control Officer program, Safety Technician, Roadway Operations, and the Traffic Management Center.” He is also responsible for “ensuring the safe and efficient operation of all of those programs.” He has been employed with Agency for approximately 19 years. Mr. Strange stated that he was the final decision-maker in this matter. He affirmed that the proposing official in Employee’s matter was Morena Lancaster (“Ms. Lancaster”), who is his direct report. Mr. Strange confirmed that he reviewed the proposed action and agreed with Ms. Lancaster’s decision to propose termination. Tr. pgs. 12-14.

Mr. Strange cited that based on the information presented to him, which included Ms. Lancaster’s proposal, the Hearing Officer’s response and the Union’s response, he found that the proposed termination action was justified. When asked what he considered in determining that termination was appropriate in this matter in terms of the *Douglas* Factors, Mr. Strange testified that he relied on Employee’s persistent aggressive language and behavior “regarding intimidation to employees on how they were to respond or interact or response to management about this matter. And then, as a whole, this was just not how we, as district government employees, interact especially not in public. These factors were just building one on top of the other and it just did not get any better, for lack of a better explanation. So, you know, these elements made it seem that the employee had made a decision on which way he was going.” Tr. pgs. 15 – 17.

Mr. Strange asserted that he rated *Douglas* Factor No. 1 as ‘aggravating’ because Employee’s conduct was continuous and not just a one-time incident.<sup>4</sup> He explained that the threatening remarks regarding the supervisor, workplace bullying and things that were going to be done to the supervisor, or opinions about the supervisor were continuous over a couple of days. Mr. Strange testified that around May 9th, 2024, DDOT management was made aware via email from other employees of threats made by Employee towards a supervisor. He asserted that DDOT management was also notified of incidents with employees “that were related to this matter and them receiving threats or interactions with [Employee].” Mr. Strange stated that there were other incidents involving other employees during the same time period of May 7, 2024, to May 9, 2024, that impacted his decision to rate *Douglas* factor No. 1 as aggravating. Tr. pgs. 17 – 23, 49.

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<sup>4</sup> Nature and seriousness of the misconduct or performance to fact and its relationship to the employee's duties, position, responsibilities, including whether the offense was intentional, technical, or inadvertent, was committed maliciously or for gain, or was frequently repeated, how did you rate that factor.

Mr. Strange noted that he rated *Douglas* Factor No. 2<sup>5</sup> as ‘aggravating’ citing the interaction with the public as the greatest concern of that factor for him. He noted that the “escalating measures happened within the public’s eye.” Mr. Strange stated that these incidents happened on the streets and between government employees that were in uniform. He testified that this conduct “puts a certain taint on us, as a unit, on how we conduct ourselves and how we conduct ourselves as government employees.” Mr. Strange confirmed that Employee was in uniform when the incident occurred. Tr. pgs. 23 – 24. Mr. Strange testified that he rated *Douglas* Factors Nos. 3 and 4, as ‘neutral’. He explained that Employee did not have any past disciplinary record; he had only been with Agency for a short time and “there wasn’t anything else to base it upon.”<sup>6</sup> Tr. pgs. 24-25.

Mr. Strange rated *Douglas* Factor No. 5<sup>7</sup> as ‘aggravating.’ He cited that the current matter started off as a very simple matter and it quickly escalated; as such, he did not know what would aggravate Employee. Mr. Strange stated that he also considered the threats and other elements that came with it. He asserted that it was difficult to predict how Employee was going to act in a professional environment Tr. pgs. 25- 26, 28-29.

Mr. Strange rated *Douglas* Factors Nos. 6 and 7<sup>8</sup> as ‘neutral.’ He cited that he did not have information on how other employees were disciplined for similar offenses. Mr. Strange also stated that he relied on the Table of Penalties to make his determination. Tr. pg. 29. Mr. Strange testified that he rated *Douglas* factor No. 8<sup>9</sup> as ‘aggravating’ because the incidents occurred while in the public eye and in uniform, making it challenging and detrimental to the district government. Mr. Strange rated *Douglas* factor No. 9<sup>10</sup> as ‘neutral’, as there was no ability to warn outside of normal methods. Tr. pgs. 29-31.

Mr. Strange testified that he rated *Douglas* factor No. 10<sup>11</sup> as ‘aggravating’ because “there was no element of the employee having any apologetic tone or wanting to apologize and de-escalate the matter.” He noted that Employee did not show any potential for rehabilitation. He affirmed that he considered Employee’s workplace misconduct and that this was a persistent matter of workplace violence as the threats continued between different employees. Mr. Strange affirmed that TCOs are trained and oriented in how to de-escalate situations. He also confirmed that TCOs are trained to act in professional manner while on duty and while in uniform, and to not display any bullying or aggressive behavior toward the public. Tr. pgs. 31-33.

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<sup>5</sup> The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public and prominence of the position.

<sup>6</sup> The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

<sup>7</sup> 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.

<sup>8</sup> Consistency of the penalty with those imposed upon other employees for the same or similar offenses and consistency of the penalty with any applicable agency table of penalties.

<sup>9</sup> The notoriety of the offense or its impact upon the reputation of the agency.

<sup>10</sup> 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

<sup>11</sup> Potential for the employee’s rehabilitation.

Mr. Strange rated *Douglas* factor No. 11<sup>12</sup> as ‘neutral’, citing that there were no mitigating circumstances. He rated *Douglas* factor No. 12<sup>13</sup> as ‘aggravating’. Mr. Strange explained that “in my mindset in my evaluation, there was no way to consider alternative sanctions or other actions to mitigate this matter.” Tr. pgs. 33-34. Mr. Strange testified that Employee made derogatory comments towards his supervisor, Ms. Sylver. He affirmed that he considered these statements in his final decision to remove Employee. Tr. pgs. 36-37.

Mr. Strange testified that Employee’s supervisor was Ms. Sylver. Mr. Strange noted that he did not interview Employee about the current incident. He stated that the proposing official, Ms. Morena Lancaster (“Ms. Lancaster”) would have been responsible for interviewing Employee. Mr. Strange asserted that generally, once Agency receives any proposed threats and associated abusive language of that nature, they have the person reporting the incident document the statement. They also determined whether there are additional witnesses and take their statements. He cited that if the person who allegedly made these statements was represented by the union, the union person is brought in for their statement. The person who allegedly made the statement is also asked to provide a statement. Once all that information has been gathered, it is presented to Agency’s Human Resources Department to commence an investigation and to determine whether there’s any validity behind these matters. The Human Resources Department then provides them with the next steps. Tr. pgs. 40-42.

Mr. Strange further testified that, after the investigative meeting, Employee was placed on administrative leave and provided notice of the administrative leave and any items the Agency provided to him were retrieved. Tr. pg. 43. Mr. Strange cited that because Employee was not his direct report, he could not testify about his performance. He noted that “I don't directly engage with the [E]mployee on a day-to-day basis.” Tr. pgs. 44-45.

Mr. Strange indicated that Employee’s direct supervisor was Supervisor Traffic Control Officer, Mario Johnson (“Mr. Johnson”). He explained that as Mr. Johnson, Ms. Sylver, and “other supervisory Traffic Control Officers work the same shift, they do provide support to one another. So, if they are observing something that is inaccurate ... they don't tell the employee, hold on, wait, let me get your supervisor. They address the matter that is in front of them. Now, they will share what they’ve addressed with the employee with their respective supervisor, but it is not the responsibility of each and every supervisor to deal with each and every employee, you know. If something happened to the employee in the field and a supervisor observes it, you don't tell the employee, time out, let me get your supervisor here so that they can deal with this matter, you know. If you're hurt, that supervisor has a responsibility to deal with that matter.” Tr. pgs. 46-48.

Mr. Strange testified that not all employees’ training courses are written. He confirmed that during the training, employees are reminded on how to behave while interacting with the public and on duty. He cited that employees also go through possible scenarios during the training. Tr. pgs. 48-49.

Calvin Beecham (“Mr. Beecham”) Tr. pgs. 51-75

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<sup>12</sup> Mitigating circumstances surrounding the offense.

<sup>13</sup> The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Mr. Beecham was a Traffic Control Officer at Agency, where he worked with Employee. Tr. pgs. 51-52. Mr. Beecham testified that between May 7, 2024, and May 9, 2024, while they were out at a gas station, Employee "... was parking his car and was kind of like hostile and upset about a situation that happened with our supervisor Ms. Sylver." Mr. Beecham further stated that Employee was "[j]ust calling Ms. Sylver B-words and saying he was going to pull up on her and ...our director Mr. Strange ... something about he had turned his keys in early and got caught. And then Ms. Sylver ... didn't say anything at the time, but I guess she wrote him up or something like that. That's why he was really upset." Tr. pgs. 53 – 54.

According to Mr. Beecham, "At that moment, I didn't fear for my safety. It was more so concern about Ms. Sylver because, again, he said he was going to smack her. He also stated that he has a gun that could put down a horse that he was going to pull up on her, and those are like, you know, threatening words to where we come from, you know, in D.C., or just, you know, in our generation, period." Mr. Beecham explained that "pull up, like, if [Employee] sees her, like, onsite, he's just going to pull up, like, to hit her or to harm her. Like, oh, I'm going to pull up on you whenever I see you. It's like an onsite slang that we use to, like, cause, like, threat to a person." He affirmed that he took Employee's words as a threat. Tr. pg. 55. Mr. Beecham cited that he did not call the police immediately because Employee "didn't say, oh, I'm going to go kill her right now in this moment." Tr. pgs. 63, 67.

Mr. Beecham testified that he understood Employee's reference to the term 'Street Nigga' to mean "like, some guy to go hard like, you know, like I'm not nobody to play with. It's kind of like aggressive tone like, oh, you know, I'm a real street nigga. ... But if you're a street nigga, you know, that means that you're some type of, like, you know, bully, some type of real guy to fear." He reiterated that he "took that as a threat and I thought he was approaching me at the same time that he was saying that. So, I'm starting to back up. And then you go, oh, I'm a real nigga, I'm a real street nigga. And then you grabbing, like, stuff in your pocket as well. But, again, I don't know what was in his pocket. Could have been keys, a knife or anything like that." Tr. pgs. 61-62.

Mr. Beecham asserted that he reported the incident to management the next day via email. Tr. pgs. 56. He stated that because they had to work together and, in public, he was concerned about workplace violence, and he wanted everyone to be safe. Mr. Beecham affirmed that he was bullied and harassed by Employee after the incident. He confirmed that Employee was not assigned to the same post as him, but Employee came to his post making threatening statements to him. Mr. Beecham explained that Employee came looking for him at his post stating that "I'm a real nigga and I don't play those type[s] of games. And then he kept digging in his pocket. So, I kept asking him, like, kind of like to back up, back up. And then that's when I felt threatened." Mr. Beecham could not recall if his conversation with Employee was recorded. He testified that Employee used "threatening words and threatening gestures that I ... felt threatened..." Mr. Beecham testified that when Employee arrived at Mr. Beecham's assigned post, Employee had a conversation with Mr. Beecham's co-worker and partner for the shift, Tracie Cole ("Ms. Cole"), before engaging with Mr. Beecham. He testified that he contacted his supervisor who could hear Employee yelling in the background, and the supervisor advised him to file a police report, which he did on the same day. Mr. Beecham also explained that another supervisor by the name of Al "just hopped out the car and, like, he grabbed [Employee] away and told him that he wasn't supposed to be over there and then to go back to his assigned assignment." He stated that he did

not follow up with the police after he filed the report because Employee had been removed from the area. Mr. Beecham also asserted that he had an interview with Agency's management after he reported the incident to the police. He confirmed that he provided a statement to Agency's Human Resources Department after the interview. Tr. pgs. 57-60, 68-74.

Franchesca Sylver ("Ms. Sylver") Tr. pgs. 76-94

Ms. Sylver works for Agency as a Supervisory Traffic Control Officer. In this role, her duties include ensuring that the Traffic Control Officers ("TCOs") are at their assigned post, making sure that the traffic isn't gridlocking, ensuring that the TCOs are issuing citations as needed, approving time, and approving leave. She confirmed that her duties also included instructing and directing TCOs. Tr. pg. 77.

Ms. Sylver affirmed that she had a colleague named Mario Johnson. She confirmed that on or about April 6, 2024, she had an encounter with Employee. Ms. Sylver explained that "the supervisory office was on the eighth floor of the Reeves Building at the time, but the tracker box, which is the box where the TCOs get their keys for the vehicles, was still located on the second floor." She stated that she was on her way to the restroom on the second floor around 1:30 p.m. when she noticed a group of TCOs, including Employee, near the elevator. Ms. Sylver stated that the TCOs were trying to return their keys back to the tracker box, but she told them that it was too early for them to do so because they didn't get off until 2:30 p.m. Ms. Sylver cited that she then continued to the restroom as all the TCOs left. She testified that as she was coming out of the restroom, she saw Employee coming out of the "double doors which leads to the tracker box where they put the keys." Ms. Sylver said she asked Employee if he put his keys back and Employee said 'yes'. She then told Employee that he was not supposed to put his keys back that early, to which Employee stated to her that Mr. Strange opened the door for him. Ms. Sylver asserted that she explained to Employee that although Mr. Strange opened the door for Employee, Employee knew they were not supposed to turn in their keys that early, to which Employee responded that Mr. Strange did not say anything about Employee leaving early. Tr. pgs. 78 -80.

Ms. Sylver stated that when she got to the supervisor's office after speaking with Employee, the other supervisors were talking about Employee and some other incident he was involved in. Ms. Sylver cited that she told Mr. Johnson, Employee's direct supervisor, about the incident that she just encountered with Employee putting his keys in early. Ms. Sylver noted that Mr. Johnson said he would have a conversation with Employee, and she assumed he did. She stated that that was her last interaction with Employee. Tr. pgs. 80 - 81.

Ms. Sylver testified that around May 7, 2024, or May 9, 2024, she received a call from Mr. Beecham stating that Employee "had approached him on his post in reference to, like, hearsay, you know, like that Beecham had basically came to management and told things that [Employee] supposedly said to him. And I, like, could hear [Employee] in the background or who I think was [Employee]. He said ... something on the lines of, like, I'm from the streets, or something. It was becoming hostile. And Beecham was like, you know, Ms. Sylver, should I leave my post? Like, I don't want to go back and forth with him. And he sounded like he was afraid, Mr. Beecham. So, I told Mr. Beecham, yes, to leave his post, and I told him to go to the police station to make a report." Ms. Sylver affirmed that Mr. Beecham filed a police report, and she informed Mr. Jermont

Graves, as well as the Branch Manager, Ms. Lancaster, of what happened. Ms. Sylver asserted that she was not sure if Employee was the one in the background because she was on the phone and not physically present on the scene to see who it was. Tr. pgs. 81-82, 87, 91-93.

Ms. Sylver affirmed that she was made aware that threats were made towards her. She explained that she had received a phone call from Mr. Beecham around the same time informing her that he was concerned about her safety. She cited that Mr. Beecham stated that "... ever since you said something to [Employee] about putting his key back, he's been, you know, saying that you're a snitch and a hot A-word B-word... He was saying you're a hot-ass bitch, and you're a snitch, and that he was going to get somebody to smack me... he told me that he ran into [Employee] at a gas station. And [Employee] told him that he has a gun as big as a horse and he'll do what he need to do or whatever." Ms. Sylver asserted that Mr. Beecham told her he was tired of the threats Employee was making and that he would file a report to which she told him he could go ahead and file the complaint. Ms. Sylver stated that she was later contacted by Mr. Strange who inquired if she was aware of what Mr. Beecham reported, and she said 'yes.' Ms. Sylver cited that Mr. Strange asked her to write a statement, which she did. She noted that she was later interviewed by Agency's Human Resources department for a workplace violence investigation. Tr. pgs. 82-85.

Ms. Sylver affirmed that she felt threatened, but she did not report to the police that she felt threatened. She explained that she did not understand how the incident spiraled and that it was unnecessary because Employee was not disciplined for putting his keys back early, all she did was bring it to his attention and report the incident to Employee's supervisor. She asserted that she was a little confused as to why Employee got so upset to the point where he wanted to harm her. Ms. Sylver also stated that apart from the fact that Employee was male, she did not know his mindset at that point, and the threats were continuous. She stated that they were not only made to Mr. Beecham, but they were made to other TCOs, who all approached her about the incident. Tr. pgs. 85-86, 88.

Tracie Cole ("Ms. Cole") Tr. pgs. 96 - 114

Ms. Cole is a Traffic Control Officer with Agency and has been with Agency for three (3) years. She started training with Employee in October 2022, and they have been assigned to the same location. Ms. Cole recalled the incident that occurred on or about May 7, 2024 or May 9, 2024, regarding Employee. Ms. Cole testified that another employee informed her that Employee was talking about her and that Employee called her "hot, in all intents and purposes, like a snitch." She stated that she was upset because she does not bother anyone at work. Ms. Cole said she went to Employee to find out why he called her 'hot' when she doesn't bother anyone. Ms. Cole asserted that Employee said he heard it from someone else. She stated that she told Employee to keep her name out of his stuff. Ms. Cole said she provided a statement regarding Employee's behavior "because I was bothered. And then my partner was Calvin Beecham at the time." She noted that it was tense and hostile between Employee and Mr. Beecham, and she was caught in the middle. Tr. pgs. 96-100, 106-107.

Ms. Cole testified that she was sitting in her work car on May 9, 2024, when Employee approached Mr. Beecham. She noted that Employee and Mr. Beecham were standing not far away from her. Ms. Coles explained that Employee was "frantic and frustrated because I believe he just

had came (sic) out of a meeting. So, he addressed Calvin, trying to ask Calvin why he said what he said” regarding the situation with Ms. Sylver. Ms. Cole asserted that Employee asked Mr. Beecham why he filed a report stating that he was going to harm Ms. Sylver. Ms. Cole also noted Mr. Beecham wasn’t really engaging with Employee, but they kept going back and forth, threatening each other. She cited that “[Mr. Beecham] was more so defending himself and ...[Employee] was like, look, I ain't trying to take you down. I'm just trying to figure out what you trying to say. Then it wind up going left and it got a little heated.” She states that she told Employee that he should not have come to their location since that’s not where he was supposed to be. When asked if it seemed Employee was threatening Mr. Beecham, Ms. Cole stated that “It seemed as though it could have been, yeah.” She stated that Employee was angry and frustrated. Ms. Cole noted that Mr. Beecham recorded his exchange with Employee. Ms. Cole cited that one of the leads, named Alvin, pulled up and asked Employee why he was at that post, which was not his post, and Employee left. Tr. pgs. 101-105, 107-110. Ms. Cole identified Employee on the video recorded on May 9, 2024, as the individual outside of the vehicle. Tr. pgs. 113-114.

Raymon Pettis (“Mr. Pettis”) Tr. pgs. 115 - 125

Mr. Pettis is a Traffic Control Officer at Agency. He stated that on or about May 2, 2024, he heard Employee make threatening statements toward Ms. Sylver. Mr. Pettis testified that Employee told him what took place with him and his supervisor, Ms. Sylver. Mr. Pettis stated that Employee said “he turned a key in and [Ms. Sylver] told on him. And she's a hot bitch. He going to get her fucked up... That's what he was saying. And I tried to tell him, you know, like, man, go ahead with that, man. Like, you at work and all this stuff. So, like, can't be doing that...this particular day he was like, man, after I talked to him, he was like, you right. Man, I'm glad I talked to you. And he, like, after that the next couple days, like, when I saw him, he was back to the same thing again.” Mr. Pettis stated that Employee made reckless statements about him as well. He cited that he reported the threats towards Ms. Sylver between May 3 and May 8, 2024, and he submitted a witness statement to Agency management on these threats. Tr. pgs. 116-124.

Angelique Brewer (“Ms. Brewer”) Tr. pgs. 126 -137

Ms. Brewer works at Agency’s Human Resources (“HR”) Division, Employee Relations, and is responsible for conducting investigations, and assisting management with enforcing the District's policies and procedures. She affirmed that she worked for Agency in July of 2024, and recalled investigating threats made by Employee. Ms. Brewer confirmed that she wrote an investigative report that was presented to management. She confirmed that she interviewed Ms. Sylver, Ms. Cole and Mr. Pettis as part of the investigation. Ms. Brewer also confirmed that she interviewed Employee with his Union representative present. Tr. pgs. 126-128, 134-137.

Ms. Brewer acknowledged that she reviewed a recording of Employee speaking to Ms. Cole, outside a vehicle as part of her investigation. Ms. Brewer testified that Employee was defensive, but polite when she interviewed him. She cited that “he did emphasize that he did not know Ms. Sylver personally because that was not his supervisor. The entire interview he wanted to talk about his work ethics. He was very defensive. He found humor to a lot of the comments that were alleged when I was asking him those questions. And then at the end, he talked about his reliability, his professionalism, and just stated that those allegations were not like him.” Ms.

Brewer stated that Employee denied making the alleged statements about Ms. Sylver. Ms. Brewer stated that she concluded based on “multiple witness accounts of the incident that occurred on April 6, that it was likely to be true that the allegations were true because he himself, [Employee], stated that there were no witnesses around on the encounter with Ms. Sylver.” She cited that all the witnesses she interviewed noted that Employee was one to spread rumors and he was very upset about the April 6, 2024, incident involving turning in the key early. Tr. pgs. 129-131, 134-136.

Ms. Brewer also testified that she investigated the May 7, 2024, and May 9, 2024, incidents involving threats made to Ms. Sylver and other employees. She stated that she did not find Employee to be trustworthy because he asserted that he was at Virginia Avenue vacuuming out his car and that he never spoke to Mr. Beecham, but Mr. Beecham had too much information about the April 6, 2024, incident. Ms. Brewer also noted that on May 9, 2024, Employee alleged that he never spoke to Mr. Beecham at all, but Mr. Beecham was the one recording the video, which proves he was in proximity. Ms. Brewer also asserted that Employee stated that the conversation with Ms. Cole while she was in the vehicle was about cupcakes, but that was not true because the conversation was about Employee referring to Ms. Cole as ‘hot’ and why he started the rumors that Ms. Cole was ‘hot’ or a ‘snitch’. She testified that she did not find Employee credible. Tr. pgs. 131 – 132.

### **Employee’s Case in Chief**

#### **Employee Tr. pgs. 139-159**

Employee was a Traffic Control Officer with Agency for approximately three (3) years before his termination. He stated that his direct supervisor was Mario Johnson. Employee stated that April 6, 2024, was a Saturday, and he did not work Saturdays. He testified that the incident involving returning his key early, happened on a Tuesday or Wednesday, and not on a Saturday. Tr. pgs. 139-141.

Employee explained that “So, I actually was walking, leaving out the bathroom and I seen Mr. Strange. I didn't even see Ms. Sylver at first. I saw Mr. Strange. When they opened the door, end up talking to him and I told him I was going to, you know, put the keys back and I was going to go back and sit in the waiting room ... So, I told him, you know, it's cool, I put my keys ... and I went to sit in the waiting room with other coworkers... but in the midst of that I seen Ms. Sylver and she asked me what was I doing. I said, I just put my keys in. I'm about to go, you know, sit down. I ain't leaving... So, from that conversation, it's probably ... less than a three-minute walk to get to the actual sitting waiting room where other TCOs was at. So, in the midst of getting there, I get a call from Mario and I got a call from ... one more officer, but it was a back-to-back call and they was like I put the keys back and I was about to leave, trying to make sure I wasn't going nowhere or anything. I was like, no, I just put the keys back and I went and sat down. I said, we ain't got no more work and the line about minutes for 60 people to turn the key in and put it back in the box. I'm like literally going to sit back in... And all of a sudden I just hear, oh, man, Sylver say she caught you this. I'm like, well, I didn't do nothing wrong. I didn't get discipline for it. So, what is the problem? And everything seemed like it escalated from there.” Tr. pgs. 141-144.

Employee testified that thereafter, “[p]eople I never even would go talk to in years that I worked there, now all of a sudden they saying I’m talking to them. People I actually known as my friends, as so-called Raymond Pettis, it was like I couldn’t believe the whole situation I was getting myself put in. It was very frustrating for sure.” He cited that he was a hard worker, and he felt like he was being framed for something he did not do. Tr. pg. 44.

According to Employee, his interaction with Mr. Pettis did not occur as described by Mr. Pettis. Employee asserted that Mr. Pettis was “looking a little down.” He asked Mr. Pettis what was going on, and he explained that his wife, who also worked at Agency found a message on Mr. Pettis’ phone between Mr. Pettis and Ms. Sylver. Employee stated that Mr. Pettis “was more worried about what Ms. Sylver might do to him and I’m like, man, you know, just continue doing your job.... And next thing you know is people telling me they see them going to lunch together. And it escalated from there because I tell him, oh, you need to chill, you know. it’s going to get back to your wife, you know...” Employee stated that “[b]esides me telling [Mr. Pettis] he need to leave [Ms. Sylver] alone or either switch his supervisor to Mario...” he did not make any comments to Mr. Pettis about Ms. Sylver. Employee cited that he had a decent relationship with Mr. Pettis prior to this incident. Tr. pgs. 145 -146, 157-158.

Employee asserted that he had never had a problem with Ms. Cole. He cited that he bought cupcakes from Ms. Cole and that she was a good, respectable woman. Employee stated that was the reason when Ms. Cole came to him about the rumors, he was highly disturbed and frustrated. Employee noted that he has never been a verbally abusive guy or even abusive at all to any of his coworkers. Tr. pgs. 147, 157.

Employee testified that on May 9, 2024, he was driving a 15-passenger van, and his assigned location was across the street, so he had to find somewhere to park it. He cited that he ended up parking the van right where Ms. Cole was. He explained that “[w]e have a coworker ... and his mother works in there. So, we all would go there to use the bathroom sometimes in that...building. And I didn’t put [down] bathroom, but I also just popped and just was going to run up and come back down and I seen [Ms. Cole] and I seen [Mr. Beecham]. I got to talking to [Ms. Cole] for a minute ... trying my best to explain the situation to her and letting her know I ain’t got nothing to do with it, it’s wrong, I’m more upset that my name is in it because I don’t ... condone that and I’m truthful and honest with everybody here, so why is my name in these situations.” Tr. pg. 148.

Employee cited that as he was talking to Ms. Cole, he noticed Mr. Beecham was recording him. He stated that as he approached Mr. Beecham, he was backing up and Employee got a little upset especially because he heard Mr. Beecham’s name was in the situation. Employee asserted that before anything happened, the lead supervisor, Mr. Alvin, pulled up and told him Mr. Strange wanted to see him in the office. Employee said he went to the office to see Mr. Strange, and he took his phone and badge and placed him on administrative leave without telling him the reason he was placed on administrative leave. Tr. pgs. 149.

Employee asserted that he did not threaten Mr. Beecham. He stated that they are not supposed to be recording each other and that he felt “[l]ike, are you trying to frame me or what are you putting this all together for? And then right after that, I get picked up by Alvin. Alvin pulls up,

tells me to go to the office and Strange is right there already with my papers.” Employee testified that he never had a situation where he was disrespectful to Ms. Sylver. He stated that if Ms. Sylver asked him to go anywhere or complete a task, he did. Employee testified that ever since Ms. Sylver tried to ask him some personal questions about his finances, “it seemed like everything kind of escalated.” Tr. pgs. 150-151.

When asked if he made disparaging comments to any of his colleagues about his personal feelings about Ms. Sylver, Employee stated that “[n]ot one, because I had no personal feelings. ... The situation supposed to have been over with. I'm trying to go about my day and yet my name keep getting brought up in situations.” Employee said he did not bring this issue to the attention of management because he was hoping the situation would die down. He noted that he never knew emails were sent out regarding the situation and management did not address these issues with him. Tr. pgs. 152 – 154.

Employee affirmed that he is the one seen in the May 9, 2024, video recording. He cited that he got his administrative leave papers on that same day. Employee affirmed that he said in the video that he was a ‘real street nigga.’ He noted that he did not feel threatened by Mr. Beecham on May 9, 2024, and he did not file a police report on that day. Tr. pgs. 155-157, 159.

#### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW<sup>14</sup>

Pursuant to OEA 631.2, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Furthermore, the District Personnel Manual (“DPM”) regulates the manner in which agencies in the District of Columbia administer adverse and corrective actions. DPM § 1602.1 provides that disciplinary action against an employee may only be taken for cause. According to the Notice of Final Decision for Proposed Removal, Agency terminated Employee pursuant to: (1) DPM § 1605.4(a) and § 1607.2(a)(15); and (2) DPM §1605.4(a) and § 1607.2(a)(16).

- 1) ***Whether Agency complied with DPM § 1602.3 which provides that adverse action shall commence no more than ninety (90) business days after the agency or personnel authority knew or should have known of the conduct supporting the action; and Whether Agency complied with the service requirements of DPM §§1618.6-8 when it issued the Notice of Proposed action.***

At issue here is whether Agency, in administering the instant adverse action, adhered to applicable provisions of law, specifically DPM § 1602.3(a) and DPM §§1618.6-8.<sup>15</sup> DPM § 1602.3(a) provides that a “corrective or adverse action shall be commenced no more than ninety (90) business days after the agency or personnel authority knew or should have known of the performance or conduct supporting the action.” The OEA Board has held that the legislative intent

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<sup>14</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”).

<sup>15</sup> 6-B DCMR 1602.3 and DPM 1602.3 will be used interchangeably throughout this decision.

of the ninety-day rule (“90-Day-Rule”) provision found in DPM §1602.3(a) is to “establish a disciplinary system that included *inter alia*, that agencies provide prior written notice of the grounds on which the action is proposed to be taken.”<sup>16</sup> The Board noted that prior to this revision, the “courts have ruled on matters pertaining to the ninety-day rule as it related to D.C. Code § 5-1031...[t]his statutory language is only applicable to those employed by the Metropolitan Police Department or the D.C. Fire and Emergency Medical Service agencies.”<sup>17</sup> That noted, the Board further held that while the intent for the 1602.3 (a) provision was not “spelled out in the DPM, it is reasonable to believe that the intent was similar to that provided by the D.C. Council when establishing the language of the ninety-day rule.” The Board referenced a D.C. Court of Appeals decision<sup>18</sup> wherein the Court found that “the deadline was intended to bring certainty to employees of an adverse action that may otherwise linger indefinitely.”<sup>19</sup> The Board also held that this provision of the DPM 1602.3(a) like its counterpart found in D.C. Code §5-1031, is mandatory in nature.<sup>20</sup>

Here, Employee argues that he was placed on administrative leave on May 9, 2024, and that he received two (2) Notices of Proposed Removal in the mail, *at the same time*, with one dated August 27, 2024, and the other dated October 1, 2024.<sup>21</sup> (Emphasis added). Employee cites that the notices were delivered to him on October 4, 2024, and as such, Agency violated the 90-day rule. Agency argues that it did not violate the 90-day rule. It explains that May 9, 2024, is considered the incident date for purposes of § 1602.3, and because it issued the Advance Written Notice of Proposed Removal (“NOP”) on August 27, 2024, 75 business days from May 9, 2024, it was still well within the requirements of the 90-Day Rule.

Pursuant to the record, Mr. Strange was notified via email on May 7, 2024, of Employee’s alleged threats against Ms. Sylver. Employee was placed on administrative leave on May 9, 2024, following another incident with Mr. Beecham on the same day. Both parties acknowledge that the 90-day clock was triggered on May 9, 2024. Therefore, I find that Agency knew of the conduct supporting the current action on May 9, 2024. The NOP addressed to Employee is dated August

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<sup>16</sup> *Keith Bickford v Department of General Service*, OEA Matter No.1601-0053-17, Opinion and Order on Petition for Review (January 14, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* citing to *District of Columbia Fire and Medical Services Department v D.C. Office of Employee Appeals*, 986 A.2d 419,425 (2010).

<sup>19</sup> *Id.* The Board also cited the Court of Appeals as noting that the “D.C. Council, in establishing the ninety-day rule, was motivated by the exorbitant amount of time that the [adverse action] process was taking, such that...employees had to wait months or even years to see the conclusion of an investigation against them.”

<sup>20</sup> *Id.* at pgs. 9-10. *See also District of Columbia Department of General Services v. Office of Employee Appeals*, 2020 CA 001096 P(MPA) (February 3, 2021).

<sup>21</sup> It should be noted that the October 1, 2024, Notice Employee referred to as a second NOP is the Hearing Officer’s first Report and Recommended Decision. Upon receipt of the NOP and the October 1, 2024, Hearing Officer’s Report and Recommended Decision, Employee’s representative contacted Agency and the Hearing Officer to request a five (5) day extension to respond on behalf of Employee. The Hearing Officer informed Employee’s representative that “My review of this Proposed Action is completed, and the Hearing Officer’s Report has been issued. This matter is now closed, an extension is not granted.” Thereafter, on October 23, 2024, the Hearing Officer emailed Employee’s representative stating that “Upon further review the Agency will allow the Union to file a response on behalf of the employee. The response is due on or before the close of business on November 4, 2024.” *See*. Employee’s Brief on Service of Administrative Action at Exhibits A-D (June 13, 2025). The Hearing Officer issued another Report and Recommended Decision on November 27, 2024. *See*. Agency’s Answer at Exhibit 1.

27, 2024; however, Employee argues that he was only made aware of the adverse action on October 4, 2024, when he received the NOP in the mail.

DPM § 1602.3(a) is silent on whether and how the agency is required to communicate its decision to commence adverse action to the employees. This notwithstanding, as previously noted, the OEA Board has held that the legislative intent of the 90-Day Rule provision found in DPM §1602.3(a) is to “establish a disciplinary system that included inter alia, that agencies provide prior written notice of the grounds on which the action is proposed to be taken.” (Emphasis added). Here, Agency commenced the adverse action by issuing an NOP to Employee.<sup>22</sup> Pursuant to DPM §§1618.6-8:

**1618.6:** The notice of proposed actions and supporting materials *shall be served upon the employee. Service shall be accomplished by delivering the notice and materials to the employee in person, or to the employee’s address of record by a commercial courier that provides delivery tracking and confirmation information.* However, service *shall* also be deemed proper upon a showing that the employee actually received delivery of the notice, irrespective of delivery method. (Emphasis added).

**1618.7:** For notices of proposed actions delivered in person, the employee to whom the notice is issued shall be asked to certify its receipt in writing. If the employee refuses to certify receipt, a brief descriptive written statement, signed by a witness to the refusal, may be used as evidence of service.

**1618.8:** For purposes of §§ 1618.6 and 1618.7, service shall be deemed effective when the employee has actual notice of the proposed actions. (Emphasis added).

In this matter, Agency argues that the tracking information provided by the United States Postal Service (“USPS”) shows that the NOP to Employee was delivered to the front desk/reception/mail room of Employee’s apartment complex on August 29, 2024. Citing to *Kolker v. Hurwitz*<sup>23</sup>, Agency explains that “either the front desk, reception, or mail room is presumably sufficient as someone/something with an obligation to relay information because these employees frequently sort packages and mail that couriers deliver throughout the day.” In an email dated October 14, 2024, from Employee to his representative, Agency’s representative and other Agency officials, Employee cited that “these are the packages I received and the date is on them where my building concierge had signed for them to leave it.” The email included attachments of two (2) USPS documents citing that “Sorry we missed you while you were out”. These documents have Employee’s name, and the date on them is October 4, 2024. It also noted that the items were sent by “DC/DDOT/ASD”.<sup>24</sup> Agency has the burden of proof in this matter, and I find that Agency has

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<sup>22</sup> See. *Employee v. D.C. Department of Fire and Emergency Medical Services*, OEA Matter No. 1601-0056-22, Opinion and Order on Petition for Review at pgs. 23-25 (November 16, 2023). Here, the OEA relied on when the Notice of Proposed Action (“NPA”) was served on Employee to determine when the adverse action commenced regarding the 90-day rule. (Emphasis added).

<sup>23</sup> 269 F.R.D. 119 (D.P.R. 2010).

<sup>24</sup> See. Employee’s Brief on Service of Administrative Action, *supra*, at Exhibit D.

failed to provide any credible evidence to rebut Employee's assertion that the NOP was received by the concierge at his apartment complex on October 4, 2024, and not on August 29, 2024.

Additionally, Agency argues that it mailed the NOP to Employee via USPS Certified mail.<sup>25</sup> Agency provided a Certificate of Service dated August 27, 2024, with Employee's name, and signed by Steven Messam, Agency's Supervisory Administrative Officer, citing that the August 27, 2024, NOP was mailed to Employee via USPS Certified mail. Agency also provided a copy of a USPS certified mail receipt, with a date stamp of August 27, 2024, and a copy of a 'Return Receipt' form, indicating that Agency also selected the 'Return Receipt' service.<sup>26</sup> However, but for the tracking information, Agency did not provide *any confirmation of receipt information* such as the actual Return Receipt document with the signature of the person that received the mail. According to the USPS website, when certified mail is used, a signature is required from the addressee, and when certified mail is combined with Return Receipt Service, the sender is notified that a delivery attempt was made and *gets the signature of the person who accepts the mailing*.<sup>27</sup> (Emphasis added). Agency did not provide any of this confirmation information. It is illogical that Agency would send the NOP via certified mail with Return Receipt Service and in the same breath argue that it was not required to get the signature of the addressee or the person that received the mail.

Moreover, DPM §1618.6 provides in part that "...*Service shall be accomplished by delivering the notice and materials to the employee in person, or to the employee's address of record by a commercial courier that provides delivery tracking and confirmation information.*" (Emphasis added). Here, Agency acknowledged that Employee's address was incorrect by one (1) digit on the NOP. It further states that no evidence has been proffered that the August 27, 2024, NOP was returned to DDOT due to it not being deliverable. Agency claims that its proof of delivery by USPS and eventual discovery by Employee of the mailing shows that initial delivery was made to Employee's correct address on August 29, 2024.<sup>28</sup> I find this argument to be misguided. The USPS tracking information provided by Agency only proves that the NOP was delivered on August 29, 2024, to the address Agency provided to the USPS, not necessarily to Employee's address on file.<sup>29</sup> Therefore, I cannot rely on the USPS tracking information provided by Agency as proof that Employee received the NOP on August 29, 2024, because that tracking information was for mail delivered to an address other than Employee's address on record. Further, while it is true that Employee eventually received the NOP, he has asserted that he did not receive the NOP on August 29, 2024, as Agency asserts, but rather, that he received it on October 4, 2024, and Agency has not rebutted this argument.<sup>30</sup>

Additionally, DPM §1618.6, provides that service is deemed proper when "the *employee actually received delivery of the notice.*" Therefore, I find that the service of the NOP was deemed proper when Employee *actually received* delivery of the NOP on October 4, 2024. (Emphasis

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<sup>25</sup> See. Agency's Brief on Service of Administrative Action at Exhibit 3 (June 13, 2025).

<sup>26</sup> *Id.*

<sup>27</sup> <https://faq.usps.com/s/article/Certified-Mail-The-Basics> (Retrieved on February 24, 2026).

<sup>28</sup> Agency's Brief on Service of Administrative Action at pg. 5 (June 13, 2024).

<sup>29</sup> Employee's street address on file is: 5661. Agency mailed the NOP to 56611.

<sup>30</sup> Agency contends that it mailed the NOP via certified mail with return receipt services, which means Agency should have received the proof of signature of the person that received the NOP on August 29, 2024, however, the record is void of this information.

added). Besides, Agency did not submit a ‘return receipt requested’ document from the USPS after the mail was delivered to Employee. I find that a dated cover letter, by itself, is insufficient evidence of proof of receipt.<sup>31</sup> As such, I conclude that the August 27, 2024, date on the NOP and the outgoing ‘date stamp’ on the certified mail form is not sufficient evidence that Employee received the NOP. Based on the evidence in the record, I further find that Employee actually received delivery of the NOP on October 4, 2024. DPM §1618.8 cites that “*service shall be deemed effective when the employee has actual notice of the proposed actions.*” (Emphasis added).

As previously noted, the legislative intent of the ninety-day rule is to “establish a disciplinary system ... that agencies provide prior *written notice* of the grounds on which the action is proposed to be taken.”<sup>32</sup> I find that this written notice refers to the NOP and pursuant to DPM §1618.6-8, the NOP is deemed effective when Employee has *actual notice* or *they actually receive delivery of the notice*. Based on the record, Employee received the NOP on October 4, 2024, which is 102 business days from the trigger date of May 9, 2024, and twelve (12) business days beyond the deadline pursuant to the 90-Day Rule provision.<sup>33</sup> Likewise, the D.C. Court of Appeals<sup>34</sup> has found that “the [90-Day] deadline was intended to bring certainty to employees of an adverse action that may otherwise linger indefinitely.” Here, Employee testified that on May 9, 2024, Mr. Strange took his phone, badge and placed him on administrative leave without telling him the reason he was placed on administrative leave.<sup>35</sup> Tr. pgs. 149. This adverse action lingered over Employee for more than the required ninety business days. Consequently, I conclude that Agency violated DPM § 1602.3 by failing to issue the NOP within ninety (90) business days from when Agency knew or should have known of his alleged misconduct. Therefore, I find that the NOP did not comply with the ninety-day rule. As such, I further conclude that Agency violated DPM § 1602.3(a) and DPM §§1618.6-8 in the instant matter.<sup>36</sup>

The OEA Board has also held that this provision of the DPM 1602.3(a) like its counterpart found in D.C. Code §5-1031, is mandatory in nature. The OEA Board in *Bickford, supra*, cited that “... there is a logical assumption that *an agency is barred from issuing a notice of adverse action, if it was not done by the mandated ninety-day deadline of when the agency knew or should have known of Employee’s conduct.*” (Emphasis added). Additionally, OEA has held that missing

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<sup>31</sup> Agency also argues that as “a general rule, a document is deemed to be “filed” or “sent” on the date of the postmark stamped on the envelope or piece of mail, which in this case would be August 27, 2024.” I find that even if this was true, because Agency did not “file” or “send” the NOP document to Employee’s address on file, this argument is irrelevant.

<sup>32</sup> *Keith Bickford v Department of General Service*, OEA Matter No.1601-0053-17, Opinion and Order on Petition for Review (January 14, 2020).

<sup>33</sup> In *Bickford, supra*, this Office found that Agency violated the 90-Day Rule when it issued the NOP two (2) days beyond the deadline pursuant to the 90-Day Rule provision.

<sup>34</sup> *District of Columbia Fire and Medical Services Department v D.C. Office of Employee Appeals*, 986 A.2d 419,425 (2010).

<sup>35</sup> See also. Agency’s Answer to Employee’s Petition for Appeal at Exhibit 1 – Placement on administrative leave pending investigation (February 28, 2025).

<sup>36</sup> See. *Employee v. D.C. Department of Fire and Emergency Medical Services, supra*. In this matter, the OEA Board held that because “the [Notice of Proposed Action] in this case *was served to Employee* ... less than ninety days after Agency became aware ... we agree with the AJ’s conclusion that Agency did not violate D.C. Code § 5-1031(a). (Emphasis added). I find that unlike in *Employee v. D.C. Department of Fire and Emergency Medical Services*, where the employee was served/received the NOP within the 90-day period, in the current matter, Employee was served/received the NOP 102 business days after Agency became aware of the conduct supporting the action, in violation of the 90-Day Rule.

the ninety-day deadline is neither *de minimus* nor harmless. This Office has consistently held that the ninety-day deadline is viewed as mandatory, and a violation of this provision is grounds for reversal.<sup>37</sup> Additionally, the Superior Court for the District of Columbia has ruled that OEA's 90-Day Rule findings are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Based on the foregoing, I find that because Agency violated the mandatory ninety-day deadline, it is barred from bringing the current adverse action against Employee. Wherefore, I further find that Employee's removal should be reversed.

***2) Whether Employee's actions constituted cause for adverse action and if so, whether the penalty of removal was appropriate in the circumstances and within the range allowed by applicable law, rules, or regulations.***

Because I find that Agency violated DPM §1602.3(a) and DPM §1618.6-8, I will not address whether Agency, in administering this adverse action, had cause to do so or any other issues raised by the parties during the course of this appeal. As such, I will also not address whether the penalty of removal was appropriate and within the range allowed by applicable law, rules, and regulations.

**ORDER**

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of removing Employee from service is **REVERSED**.
2. Agency shall reinstate Employee to the same or comparable position prior to his removal from service.
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of his removal.
4. Agency shall file with this Office, within thirty (30) calendar days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*  
MONICA DOHNJI, Esq.  
Senior Administrative Judge

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<sup>37</sup> See e.g. *D.C. Fire and Medical Services Dept. v. D.C. Office of Employee Appeals*, 986 A.2d 419 (2010); See *Employee v. D.C. Dept. of Youth Rehabilitation Service*, OEA Matter No. 1601-0037-20, Opinion and Order on Petition for Review at 9 (February 24, 2022); *Keith Bickford v. D.C. Dept. of General Services*, OEA Matter No. 1601-0053-17, Opinion and Order on Petition for Review at 7 (January 14, 2020).