

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

responsive brief. Accordingly, I set a briefing schedule for this matter in an Order issued on September 9, 2025. That Order required Employee's brief be submitted by or before October 1, 2025, and Agency's sur-reply brief was due by or before October 20, 2025. Employee filed his brief as required. Agency did not file its brief by the prescribed deadline. On October 29, 2025, I sent email correspondence to the parties to inquire about Agency's brief. Agency cited that they had not received Employee's brief and that the representative was on a detail. Further, Agency's representative noted that once they had received Employee's brief, a sur-reply would be filed. On November 6, 2025, I issued an Order requiring Agency to submit its sur-reply brief by November 17, 2025. Agency filed its sur-reply on November 10, 2025. Upon review of all the submissions filed in this matter, I determined that an Evidentiary Hearing was not warranted. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether Agency had cause to take adverse action against Employee; and
2. Whether the action was administered in accordance with all applicable laws, rules and regulations; and
3. If so, whether termination was an appropriate penalty under the circumstances.

BURDEN OF PROOF

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

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

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 *id.* states:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code § 1-606.03(a) sets forth the jurisdictional limits of OEA. It provides that:

"An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to

subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.” (Emphasis Added)

Employee worked at Agency in the Technical Services Bureau (“TSB”) as an IT Specialist. On January 10, 2025, he was served with a Notice of proposed Adverse Action where the Agency proposed to terminate him based on the following charges:

Charge No.1 : Conduct Prejudicial to District Government.

Specification No. 1: In that you admitted to Agent Grubbs that you engaged in assaultive behavior toward Ms. [B]² on June 13, 2024, in violation of (Maryland Criminal Code 3-2030), Assault in the Second Degree. You admitted that you grabbed Ms. [B] by her hair and intentionally shoulder bumped her through the course of your verbal physical altercation. Your misconduct is further described under Section 1607.2 (a)(3) *Indictment or charge of any felony or a criminal offense that is related to the employee’s duties or his or her agency’s mission.*

Specification No. 2: In that you admitted to Agent Grubbs that you used cocaine on June 13, 2024. You were at your residence, located in Maryland, when you possessed and used cocaine in violation of (Maryland Criminal Code §5-601) Possessing or Administering Dangerous Controlled Substance. Your misconduct is further described under Section 1607.2(a)(3) *Indictment or charge of any felony or a criminal offense that is related to the employee’s duties or his or her agency’s mission.*

Charge No. 2: For the purposes of this chapter, with the exception of section 1605.5, disciplinary actions for all employees governed by this chapter are defined under Section 1607.2., Table of Illustrative Actions. Specifically, subsection **(a)(5) Conduct Prejudicial to District Government**, which reads, “*Off-duty conduct that adversely affects the employee’s job performance or trustworthiness or adversely affects his or her agency’s mission or has an otherwise identifiable nexus to the employee’s position.*”

Specification No. 1: In that you were hired by the MPD on May 8, 2023, and serve as a Professional Staff Member assigned to the Technical Services Bureau (TSB). You admitted that you engaged in a physical altercation with Ms. [B] on June 13, 2024. Furthermore, during your IAD interview on December 17, 2024, you admitted that you used cocaine while off-duty and at your residence in the state of Maryland, on June 13, 2024, and on other occasions. Your admission to possessing and consuming cocaine on multiple occasions adversely affects the MPD’s mission to safeguard the District of Columbia and accomplishing that mission with a focus on service and integrity. Your possession and use of a Schedule II federally controlled substance, violates Maryland and DC law, has a nexus to your position as an employee of the

² For the purposes of this Initial Decision and its subsequent publication to the OEA website and D.C. Register; the names of the involved party which were included as a part the submissions to this Office have been redacted to only reflect the initials of their last names.

MPD. This conduct adversely affects your job performance and trustworthiness due to the high potential for abuse, and the potential severe psychological or physical dependence cocaine use may cause. You also serve in a Security Sensitive position as a District of Columbia Government employee.

Charge No. 3: For the purposes of this chapter, with the exception of section 1605.5, disciplinary actions for all employees governed by this chapter are defined under Section 1607.2, Table of Illustrative Actions. Specifically, subsection **(b)(2) False Statements/Records**, which reads, *“Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations.”*

Specification No. 1: In that on December 17, 2024, you initially stated to Agent Grubbs that you did not use cocaine around June 13, 2024. You then admitted to Agent Grubbs that you used cocaine around June 2024, and on June 13, 2024.

Charge No. 4: For the purposes of this chapter, with the exception of section 1605.5, disciplinary actions for all employees governed by this chapter are defined under 1607.2, Table of Illustrative Actions. Specifically, subsection (a)(16) Conduct Prejudicial to the District Government, which reads, *“Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay.”*

Specification No. 1: In that, you engage in assaultive behavior toward Ms. [B] on June 13, 2024, in violation of (Maryland Criminal Code 3-203) Assault in the Second Degree. You admitted that you grabbed Ms. [B] by her hair and intentionally shoulder bumped her through the course of your verbal physical altercation.

Charge No. 5: For the purposes of this chapter, with the exception of 1605.5., disciplinary actions for all employees governed by this chapter are defined under Section 1607.2, Table of Illustrative Actions. Specifically, **subsection (i)(4) Safety and Health Violations**, which reads *“Failure or refusal to observe and/or enforce safety and health regulations to perform duties in a safe manner.”*

Specification No. 1: In that you acknowledged prior use of cocaine, which is an illegal and dangerous controlled substance. As an employee of the MPD and the District, this raises concerns surrounding your ability to adequately and safely perform your duties as a member.

On February 11, 2025, Employee had a virtual meeting with the Hearing Officer. On March 26, 2025, Employee and his Union representatives, met with the Chief People Officer Angela Simpson (“Simpson”), for a departmental hearing following the receipt of the Hearing Officers findings. Simpson was the Deciding Official in this matter. On April 29, 2025, the Final Notice was issued in this matter. Simpson dismissed Charges 1 and 5 and determined that termination was appropriate for the remaining charges. Employee’s termination was made effective April 29, 2025.

Summary of Parties' Positions

Agency's Position

Agency asserts that it had cause to discipline Employee and that it administered the disciplinary action in accordance with all applicable laws, rules and regulations. Agency avers that Employee's misconduct stems from an incident at his residence on June 13, 2024. Agency asserts that Employee and his partner (who is also an employee at MPD) were romantically involved and lived together. On June 13, 2024, Agency asserts that verbal and physical altercation occurred between the two, and that his partner's juvenile daughter and Employee's adult daughter were present. Agency further cites that both Employee and his partner called 911 and that the Charles County (MD) Sheriff responded to that residence on June 13, 2024, for a domestic assault in progress. During the interview with the sheriff, Employee's partner cited that Employee used cocaine and marijuana.³ She further cited that Employee had not slept before the incident and had been verbally aggressive for no reason. Agency further avers that "initially, Employee told IAD that he was not using cocaine around the time of the incident." But this was false, and he later admitted to using cocaine on June 13, 2024, and that his partner had been doing a lot to "upset him" and that he was also "drinking a lot of alcohol" during this time.⁴

Agency asserts that it appropriately charged Employee with Charge 2 – Conduct Prejudicial to District Government (DPM §1607.2(a)(5)). Agency asserts that Employee's off duty involvement in a physical altercation, as well as his possession and consumption of cocaine was in violation of Maryland and District laws and has a nexus to his position at MPD. Further, Agency asserts that he held a Security Sensitive position and the cocaine use has an impact on his job performance and trustworthiness. Agency also avers that it is undisputed that Employee engaged in a physical altercation and used cocaine on June 13, 2024.⁵ Additionally, regarding Employee's trustworthiness, Agency argues it had cause to charge Employee with False Statements- Misrepresentation under DPM §1607.2(b)(2). Agency maintains that in his initial interview, he lied about his cocaine use and then later admitted to having used cocaine. Further, Agency asserts that under DPM 1605.5(a), both of Employee's actions in this regard exhibit an act that constitutes a criminal offense. Agency also avers that it had cause to charge Employee with violation of DPM §1607.2 (a)(16) Conduct Prejudicial to District Government – use of abusive language et. al. Agency maintains that Employee admitted to being involved in a verbal and physical altercation with his partner on June 13, 2024, which resulted in the Charles County Sheriff being called to his residence for a domestic assault.

Agency asserts that it appropriately evaluated and weighed the *Douglas* factors in its administration of the instant adverse action. Agency avers that the incident and conduct were serious in nature and are directly relevant to his duties, position and responsibilities at MPD.⁶ Agency also averred that all employees are "expected to uphold the law and demonstrate professional conduct that reflects the department's mission." Agency asserts that the misconduct exhibited by Employee in this matter "raises significant concerns regarding judgment and adherence to ethical principles and the law."⁷ Agency also determined that the effect of the offense upon the employee's ability to perform was aggravating in this matter. Agency asserts that "trust and integrity are fundamental to fulfilling

³ Agency's Motion for Dismissal and/or Summary Disposition at Page 2 (July 29, 2025).

⁴ *Id.* at Page 3.

⁵ Agency Sur-Reply at Page 2 (November 10, 2025).

⁶ Agency Motion for Dismissal and/or Summary Disposition at Page 5.

⁷ *Id.*

assigned duties within a law enforcement agency, and this violation directly undermines those expectations.”⁸ Agency also maintains that the penalty of termination was consistent with the Table of Illustrative Actions. Agency cites that while Employee has expressed remorse for his actions, “the gravity of his actions; including the use of cocaine while serving as a member of a law enforcement agency casts significant doubt on his ability to be rehabilitated.”⁹

Agency avers that material facts are undisputed in that Employee “engaged in off-duty criminal misconduct (cocaine use and assaultive behavior) and was untruthful during the ensuing investigation.”¹⁰ Agency contends that it followed all appropriate laws, rules and regulations in the administration of the instant action and that termination was an appropriate penalty in this matter. The Agency asserts that its action should be upheld.

Employee’s Position

Employee asserts that as it relates to Charge 2, Specification 1, that “there was never an adverse effect on [his] position at MPD.”¹¹ Employee avers that he was involved in a relationship where he was “mentally and physically abused. So much so, [he] had to press charges against [his] partner and obtained a restraining order.”¹² Employee contends that he understands that his “actions were wrong as a way to cope with the abuse and stress of [his] personal relationship but since this incident in June 2024, [he has] received counseling, and [he] has learned to manage [his] stress.” Employee avers that his termination was not based on any drug testing other than his own reporting that he had a problem. Employee argues that “this action simply makes it less likely that other MPD employee/officers will be candid and honest about issues they have faced in the past.”¹³ Employee further contends that Agency’s claim that his actions impact his trustworthiness, but the discipline is based on his own admission of activity so “how can it be that I am untrustworthy if my account is being trusted without corroboration.”¹⁴ Employee asserts that he should have been tested in accordance with General Order 1002.5 or General Order 100.24, and if that had occurred, it would have revealed that it was no longer a problem, as he “took it upon [himself] to get help with counseling as well as weekly urinalysis that showed there was no dependence on any substance at all.”

Employee further avers that regarding Charge No 3., Specification 1, that he was under a lot of distress during the investigation that occurred on December 17, 2024. He cites that he is “fully aware MPD believes I admitted guilt in this matter.” However, Employee argues that his “statement does not relinquish MPD’s responsibility per General Order 100.24 – to test [him] for said drug usage, they would have tested [him] as well if [he] denied ever using said drug, not only should [he] been tested once, but twice according to the general order.”¹⁵ Employee asserts that he was never tested. Employee also maintains that while MPD believes his statement to Agent Grubbs was “made for misrepresentation, falsification or concealment purposes of material facts” that is not true. Employee contends that he was “exhausted emotionally and apprehensive of what may be

⁸ *Id.* at Page 6.

⁹ *Id.* at Page 7.

¹⁰ Agency’s Sur-Reply at Page 3. (November 10, 2025)

¹¹ Employee’s Brief (October 1, 2025).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at Page 2.

forthcoming because of his entanglement with [his partner].”¹⁶ Consequently, Employee avers that he is and can be rehabilitated and that his actions do not adversely impact his job.

ANALYSIS¹⁷

Whether Agency Had Cause for Adverse Action

In the instant matter, Employee was charged with the following violations of **DPM §1607.2(a)(5) Conduct Prejudicial to District Government**, “*Off-duty conduct that adversely affects the employee’s job performance or trustworthiness, or adversely affects his or her agency’s mission or has an otherwise identifiable nexus to the employee’s position.*”; **DPM §1607.2(b)(2) False Statements/Records**, “*Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations;* and **DPM §1607.2(a)(16) Conduct Prejudicial to the District Government**, “*Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay.*” The charges stem from an off-duty incident which occurred on June 13, 2024, wherein Employee was involved in a verbal and physical altercation with his romantic partner at their place of residence. Agency avers that it had cause to charge Employee with misconduct and that termination was an appropriate penalty. Agency asserts that Employee admitted to being involved in the physical and verbal altercation with his partner.

Further, Agency asserts that during the investigation, Employee initially lied to Agent Grubbs and said he did not use cocaine or marijuana but later admitted that he had in fact consumed illicit drugs. Agency also avers that because Employee works for a law enforcement agency, the expectation is that all employees will follow the law and not engaged in behavior that would run afoul of laws. Employee asserts that his actions during the incident are reflective of a time of mental and physical stress and abuse that he was subject to at the time. Employee also asserts that Agency’s termination is based on his admission of drug use and not the result of drug testing and that under General Orders, Agency should have tested him. Further, Employee avers that he has entered counseling and rehabilitation on his own, and that his actions would not have an adverse effect on his work.

DPM 1607.2(a)(5) Conduct Prejudicial to District Government – Off Duty Conduct

In the instant matter, the record is undisputed that Employee was engaged in a verbal and physical altercation with his partner at his residence on June 13, 2024. It is also undisputed that local law enforcement was called to the Maryland residence for a domestic disturbance/assault on that date. The record also reflects that Employee admitted to his involvement and admitted to use of illicit drugs during that time. Employee asserts that his actions were due to the stress that he was dealing with at the time. While the undersigned acknowledges Employee’s admissions of his personal issues at the time, the undersigned also notes Employee’s admission of the misconduct for which he was charged. Further, Employee does not dispute the record itself but raises that he should have been

¹⁶ *Id.*

¹⁷ 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”).

drug tested as opposed to the Agency relying on his own admission of drug use. OEA has consistently held that a finding of Conduct Prejudicial to District Government can be made when an employee engages in off duty conduct that would have an adverse impact on the agency. Here, Agency asserts that MPD is a law enforcement agency and as a civilian employee, Employee's role has important implication in the Agency's mission. Further, Agency avers the off-duty misconduct exhibited by Employee has a direct nexus to his job and impacts MPD's law enforcement mission. Agency also avers that Employee's position was security sensitive, thus highlighting the expectations of conduct. The undersigned agrees with Agency. Here, it is undisputed that Employee engaged in off duty conduct that resulted in law enforcement being called and it is undisputed that he admitted to the use of illicit drugs. As a result, I find that Agency has met its burden of proof for this charge.

DPM §1607.2(b)(2) False Statements/Records – Misrepresentation/Falsification

As was previously noted, the record reflects that during an investigation into this June 13, 2024 incident, Employee initially expressed to Agent Grubbs that he had not engaged in the use of cocaine. Later, Employee admitted that he had in fact used cocaine on that date and on previous occasions. This statement was corroborated by the statement of his partner on the date of the incident who noted that Employee had been using drugs. Employee asserts that his false statement to Agent Grubbs was not made "for misrepresentation, falsification or concealment purposes of material facts". Employee contends that he was "exhausted emotionally and apprehensive of what may be forthcoming because of his entanglement" with his romantic partner. OEA has held, that to sustain a falsification charge, that "agency must prove by preponderant evidence that employee knowingly supplied incorrect information with the intention of defrauding, deceiving or misleading the agency."¹⁸ Here, Employee provided a false statement to Agent Grubbs in the course of an official investigation. Employee admitted to his false statement and recanted, citing that he was under stress at the time he provided the statement as he feared for what may happen. The undersigned finds that Employee's misrepresentation of his drug use and admission of such exhibit that Agency had cause for this action. As a result, I find Agency has met its burden of proof regarding this charge.

DPM §1607.2(a)(16) Conduct Prejudicial to the District Government, "Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay."

Employee was also charged with violation of this section related to the off-duty incident which occurred on June 13, 2024. OEA has consistently held that this charge is related to on-duty conduct. Thus, I find that Agency can not appropriately sustain this action against Employee given that the actions for which Employee is accused of engaging in the aforementioned behavior did not occur while on-duty or while at the work site. Therefore, I find that this charge cannot be sustained as it is not related to on-duty conduct.

Whether Agency Followed All Applicable Laws

Based upon the aforementioned, I find that Agency administered this action in accordance with all appropriate laws, rules and regulations. This noted, I do find that the charge related to DPM 1607.2(a)(16) cannot be sustained given that the conduct for which the action rests upon occurred

¹⁸ *Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15 (March 1, 2017), citing *Haebe v. Department of Justice*, 288 F.3d 1288 (Fed. Cir. 2002); *Guerrero v. Department of Veteran Affairs*, 105 M.S.P.R. 617 (2007); See also. *Raymond v. Department of the Army*, 34 M.S.P.R. 476 (1987).

while Employee was off duty. This noted, I do find that the other two (2) remaining charges can be sustained. I find Employee's assertion that Agency should have drug tested him pursuant to General Orders, as opposed to only relying upon his own admission, to be inapplicable. Further, OEA has consistently held that an employee's admission of misconduct serves as sufficient evidence to sustain charges in an adverse action.¹⁹

Whether the Penalty Was Appropriate

Based on the aforementioned findings, I find that Agency's action was taken for cause, and as such Agency can rely on those charges in its assessment of disciplinary actions against Employee. In determining the appropriateness of an agency's penalty, OEA has relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).²⁰ According to the Court in *Stokes*, OEA must determine whether the penalty was in the range allowed by law, regulation and any applicable Table of Illustrative Actions ("TIA") as prescribed in the DPM; whether the penalty is based on a consideration of relevant factors; and whether there is a clear error of judgment by agency. Further, "the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office."²¹ Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise."²²

Agency relied on what it considered relevant factors outlined in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), in reaching its decision to terminate Employee from service.²³ I find that Agency's Douglas factor analysis was sufficient and exhibited appropriate

¹⁹ *Employee v. MPD*, OEA Matter No. 1601-0036-17 (June 11, 2018).

²⁰ *Sharmaine Chittams v. D.C. Department of Motor Vehicles*, OEA Matter No. 1601-0385-10 (March 22, 2013). See also *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

²¹ See *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department*, OEA Matter no. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

²² *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

²³ *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 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;

consideration for the applicable factors. Further, the TIA reflects that the range for a first occurrence of Conduct Prejudicial to District Government-Off Duty Conduct, is Counseling to a 30-Day Suspension. Additionally, the TIA notes that the range for a first occurrence for False Statements is Reprimand to Removal. As a result, I find that Agency's termination was in the appropriate penalty range. While Employee had not previously had other discipline in the past three (3) years, the Agency's discretion regarding the penalty of termination did not exceed the penalty range, nor does it reflect an abuse of managerial discretion in review of the totality of the circumstances. Consequently, I find that Agency had appropriate and sufficient cause to take adverse action against Employee. As a result, I conclude that Agency's action of removing Employee from service should be upheld.

ORDER

Based on the foregoing, it is **ORDERED** that the Agency's Motion for Dismissal/Summary Disposition is **GRANTED** and its action of terminating Employee from service is **UPHELD**.

FOR THE OFFICE:

/s/Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge

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- 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.