

Fire Dep't v. Murphy

OATH Index No. 2860/23 (May 27, 2026)

Petitioner established that respondent, a long-tenured Department employee with more than three decades of service, including work during major city emergencies such as September 11, 2001, and Superstorm Sandy, with health challenges associated with that service, engaged in misconduct by recording inaccurate time entries, failing to provide required notice of absences, and engaging in insubordination and discourteous communications with supervisors and colleagues, but failed to establish many other charges of time and leave violations, insubordination, and discourtesy. In light of the sustained misconduct, weighed against mitigating factors including her lengthy and otherwise notable service and demonstrated remorse, a penalty of a 60-day suspension without pay is recommended.

New York City Office of Administrative Trials and Hearings

In The Matter of

Fire Department

Petitioner

- against -

Carla Murphy

Respondent

Report and Recommendation

Orlando Rodriguez, Administrative Law Judge

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This is a disciplinary proceeding referred by petitioner, the Fire Department of the City of New York (“FDNY” or “petitioner”), pursuant to section 75 of the Civil Service Law. Petitioner charged respondent with misconduct and incompetence. The amended petition, comprised of 17 charges and 51 Specifications grouped into four parts, alleges that respondent: falsified CityTime records on multiple occasions between March 8, 2022, and August 3, 2022; failed to comply with supervisory instructions; failed to comply with the FDNY Social Media Policy; performed assigned duties improperly or inefficiently, or neglected or refused to perform her duties; engaged in disruptive conduct reasonably expected to interfere with the workplace and agency operations; engaged in conduct tending to bring the FDNY or the City of New York into disrepute; engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department; failed to follow FDNY’s Time & Leave Policy; and used written or spoken language, or introduced into the workplace signs or depictions, that were discriminatory, discourteous, offensive, abusive, obscene, or profane (ALJ Ex. 1).

During a twelve-day trial, petitioner relied on documentary evidence and testimony from multiple managerial and staff witnesses. Respondent testified on her own behalf and offered explanations regarding her CityTime entries and workplace conduct. For the reasons below, Specifications 1–14, 20, 23, 29, 30, 33, 37, 38, 46–51 should be sustained. Specifications 15–19, 21, 22, 24–28, 31–36, and 39–45 should be dismissed. Respondent should serve a 60-day suspension without pay.

Analysis

Background

This case arises from disciplinary charges filed against respondent, the Deputy Director of the EMS (“Emergency Medical Services”) CAD (“Computer Aided Dispatch”) Program, assigned to the Bureau of Technology Development Services (“BTDS”) within the FDNY (Tr. 677; ALJ Ex. 1 at 1). Respondent had primary responsibility for the administration and maintenance of the CAD system used in the City’s EMS operations (Tr. 679–80). EMS CAD is the software system responsible for 911 medical calls facilitating resource dispatch, field response, and any data collection associated with the calls (Tr. 112–13).

In 2021 and 2022, respondent’s duties were performed during two overlapping technology

initiatives within BTDS, including the City's mandated migration to Microsoft Windows 10 and FDNY's concurrent efforts to initiate development of a new EMS CAD system (Tr. 556-57). In late 2021, the Office of Technology and Innovation ("OTI") mandated a migration from Microsoft Windows 7 to Microsoft Windows 10 ("Windows 10") on all City workstations (*Id.*, Tr. 562). The mandated migration had a target completion date of December 11, 2021, with no exceptions permitted (Tr. 562). Respondent and the EMS CAD unit were tasked with creating and testing an image with the EMS CAD client as part of the operating system (*Id.*). An image is a software package that is specifically tailored to EMS CAD (Tr. 557). Concurrently, FDNY was engaged in planning and development for a new EMS CAD system to replace the existing legacy platform (Tr. 121, 557). While distinct in scope and purpose, both projects required coordination across BTDS and close supervision of staff with subject-matter expertise in EMS dispatch operations.

The charges at issue stem from respondent's alleged conduct arising from her work on these projects, including what petitioner describes as her resistance to directives concerning the Windows 10 migration; her handling of communications with BTDS staff, other agencies, and external contractors; her compliance with time and leave policies; and her adherence to a relocation order moving her from 11 MetroTech to 9 MetroTech (ALJ Ex. 1). The allegations also encompass the tone and content of respondent's e-mails to supervisors and colleagues (*Id.*). Petitioner asserts that respondent's alleged conduct violated numerous sections of the FDNY Civilian Code of Conduct, the FDNY Time & Leave Manual, and the Department's social media policy (*Id.*).

Respondent denies the allegations, describing them as "false, untrue and a mischaracterization of her tireless, unwavering service and dedication to the FDNY" (Resp. Br. at 1). She asserts that she had never failed to follow a supervisor's instructions, neglected her responsibilities, or engaged in behavior that was disruptive or prejudicial during the period in question (*Id.* at 14). She further asserts that her input was valued and that, despite disagreements, the projects within her responsibility were carried out successfully and completed on schedule (*Id.* at 6). Respondent also argues that she did not misappropriate any time or leave granted by the FDNY (*Id.*). However, even if she were found to have violated the Department's time and leave policy, respondent argues that termination would be an unduly harsh penalty (*Id.*).

Relevant parties

The following individuals testified and are central to these proceedings. Collectively, their accounts described the supervisory and operational framework within which respondent's conduct is alleged to have occurred.

Respondent, Carla Murphy is the Deputy Director of the EMS CAD program, and prior to January 2022, served as the long-standing manager of the EMS CAD system (Tr. 686).

Deputy Chief Information Officer, Kamaldeep Deol began supervising respondent in September 2021 and remained respondent's supervisor at the time of trial (Tr. 204–05). Ms. Deol testified extensively regarding respondent's resistance to supervisory instructions and respondent's handling of time and leave issues, relocation, and communications with colleagues.

Chief Information Officer, Benny Thottam was the senior executive of BTDS during the period in question and Ms. Deol's direct supervisor (Tr. 112).

Cacharel Greene was the administrative manager for the FDNY commissioner at the time the incidents took place (Tr. 525). Ms. Greene attended supervisory conferences with respondent and Ms. Deol on January 5 and January 28, 2022 (Tr. 530, 538).

Resa Ramlal-Cutler served as project manager on several BTDS related projects such as the Windows 10 upgrade and respondent's move from 9 to 11 MetroTech (Tr. 31, 33).

Renee Choi is a systems analyst within the EMS CAD programming unit. Ms. Choi was supervised by respondent during the period in question (Tr. 470–71).

Vlado Frckovski is the manager of the *new* EMS CAD system and was hired to manage the system during the period in question (Tr. 125–26).

JonPaul Augier is the Deputy Commissioner for Public Safety Applications and Mr. Thottam's direct supervisor during the relevant period (Tr. 1221–22).

Analysis

In a disciplinary proceeding, petitioner bears the burden of proving the charges by a preponderance of the evidence. *Foran v. Murphy*, 73 Misc. 2d 486, 489 (N.Y. Sup. Ct. 1973); *see also Dep't of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008). Preponderance has been defined as "the burden of persuading the triers of fact that the existence of the fact is more probable than its non-

existence.” Prince, Richardson on Evidence § 3-206 (Lexis 2008); see *Dep’t of Sanitation v. Figueroa*, OATH Index No. 940/10 at 11 (Apr. 26, 2010), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 11-47-A (July 12, 2011). Where witness credibility plays an essential role in determining the charges, factors to be considered include “witness demeanor, consistency of a witness’ testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness’ testimony comports with common sense and human experience.” *Dep’t of Sanitation v. Menzies*, OATH Index No. 678/98 at 2 (Feb. 5, 1998), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 98-101-A (Sept. 9, 1998). I found petitioner’s witnesses credible. Their testimony was consistent and corroborated by extensive documentary evidence. I also found respondent credible and forthcoming. Having made these findings, I now examine each specification to determine whether petitioner proved the charges by a preponderance of the evidence.

According to petitioner, respondent’s misconduct can be placed into four general categories. Specifications 1–14 concern respondent’s alleged theft of time; Specifications 15–38 address respondent’s work performance and conduct between December 2021 and August 2022; Specifications 39–46 concern respondent’s alleged failure to comply with the Department’s time and leave policy regarding sick leave; and Specifications 47–51 concern respondent’s alleged failure to perform her duties or follow supervisory instructions between June 2022 and December 2022 (Pet. Br. at 2). For purposes of this decision, I consolidate these allegations into two categories: (1) time-and-leave violations and (2) insubordination and discourtesy.

Time and Leave Violations (Specifications 1–14, 16–18, 39–46)

Falsifying CityTime records (Specifications 1–14)

In the first 14 Specifications of the amended petition, respondent is alleged to have committed a series of time and leave violations beginning on March 8, 2022, through August 3, 2022.

In support of the charges, petitioner offered testimony from Ms. Deol as well as City Time records, access-control records for 11 and 9 MetroTech, and a timekeeping and correspondence audit summary (Pet. Exs. 39–43). Ms. Deol testified that employees at FDNY record their time at work using CityTime, a timekeeping system for New York City employees (Tr. 426). Some employees have their time automatically recorded upon logging in to a workstation (Tr. 431).

Other employees, like respondent, enter the time they work manually (Tr. 430). As a supervisor, Ms. Deol was responsible for reviewing and approving employees' timesheets.

According to Ms. Deol, during the period in question, entry to 11 MetroTech, the building where respondent performed most of her work at the time, required use of an employee's identification card at a security station, also referred to as a "swipe" (Tr. 431). Once an employee enters the building, they must use their identification card to gain access to any of the floors occupied by the Department (Tr. 432–34; Pet. Ex. 42). When an employee swipes their card at an entrance, a record of the swipe is created (Pet. Exs. 40–42).

Ms. Deol testified that she reviewed respondent's CityTime entries and corresponding building access records for the week ending March 12, 2022 (Tr. 452–56; Pet. Exs. 39, 40). With respect to March 8, 2022, Ms. Deol testified that respondent recorded a "Time In" of 9:15 a.m. in CityTime, while the electronic access records reflected respondent's entry into 11 MetroTech at 10:13 a.m. (Tr. 453). Regarding March 9, 2022, Ms. Deol testified that respondent recorded a CityTime start time of 11:05 a.m., but the building access system showed an entry time of 12:07 p.m. (Tr. 454). Ms. Deol further testified that on March 11, 2022, respondent's reported start time again did not correspond with the entry time captured by the access-control system (Tr. 454–56).

Ms. Deol testified that she continued to review respondent's CityTime entries and access-control data for the following week and identified additional inconsistencies on March 16 and March 17, 2022 (Tr. 454–55). In subsequent months, her review of the records revealed similar discrepancies (Tr. 455–56).

Respondent testified extensively regarding her understanding of when her workday began and how she recorded her work hours, particularly as distinguished from building access "swipe" records. Similarly to Ms. Deol, respondent explained that a "swipe" refers to the use of an identification card to gain access to buildings, turnstiles, or secured areas within FDNY and other public safety facilities (Tr. 937). According to respondent, swipe records reflect only the time an employee physically enters a building or secured area, not necessarily when work begins (Tr. 938). Respondent testified that her workday began when she started performing work (*Id.*). She explained that, due to her role supporting critical public safety technology and her health-related accommodations, she was permitted to work remotely as needed until mid-April 2022 (*Id.*). She further testified that she was on call 24 hours a day, seven days a week, and *routinely* received

work-related calls early in the morning, late at night, and while commuting (Tr. 938–39).

Respondent stated that when she received such calls and began addressing work matters, she considered that to be the time her workday began (Tr. 938). She explained that she did not distinguish between being formally “on the clock” and responding to urgent work matters, particularly when contacted by senior FDNY personnel regarding time-sensitive issues affecting EMS operations or system reliability (Tr. 938–39). According to respondent, her longstanding practice was to record the time her work began, even when that work occurred outside the building or before she physically swiped into the workplace (Tr. 940–41).

As an example, respondent testified about events that took place on the morning of March 17, 2022, a date specifically charged by petitioner. The day was significant because it coincided with the St. Patrick’s Day Parade and the rollout of several critical EMS initiatives, including changes related to behavioral and mental health emergency response and union scheduling adjustments (Tr. 941–42). Respondent worked late into the night on March 16, 2022, in preparation for these events, and she received multiple work-related calls on the morning of March 17 while commuting to work (Tr. 42).

One of the calls she received in the morning of March 17 came from Chief Joe Sanders (*Id.*). He called to discuss EMS operations related to the parade and other ongoing initiatives (*Id.*). Respondent stated that she considered the call work, and that she engaged in similar conversations with other Department staff addressing operational issues while she was en route to her workstation (*Id.*). In support of her testimony, respondent identified a call log from her FDNY-issued work phone, which reflected calls she received and made on March 17, 2022 (Resp. Ex. S). Respondent testified that she recorded her start time in CityTime for the day based on when she began the phone call with Chief Sanders, not when she later swiped into the building (Tr. 942).

Respondent provided another example of work performed prior to arriving at her workstation. She testified that on June 23, 2022, she arrived at 9 MetroTech only to be “stopped” by Chief Brady, whom she described as being “in charge of the Department’s GIS group” during the ET3 project (Tr. 1028). After a 30-minute discussion with Chief Brady about a major project, respondent reported to her workstation and entered her start time as beginning at 9:25 a.m., the time she began her discussion with Chief Brady (Tr. 1029). Respondent testified that her CityTime

entries were therefore intended to reflect the actual commencement of work activity, including work performed remotely or while commuting, and not solely the time of physical entry into the workplace as captured by access-control systems.

To establish a charge of misconduct, there must be some showing of fault on the employee's part, either that he or she acted willfully and intentionally or negligently. *See Reisig v. Kirby*, 62 Misc.2d 632, 635 (Sup. Ct. Suffolk Cnty. 1968), *aff'd*, 31 A.D.2d 1008 (2d Dep't 1969); *McGinige v. Town of Greenburgh*, 59 A.D.2d 908, 908-09 (2d Dep't 1977), *rev'd on other grounds*, 48 N.Y.2d 949, 951 (1979). "Mere errors of judgment, lacking in willful intent and not so unreasonable to be considered negligence, are not a basis for finding misconduct." *Dep't of Correction v. Callabross*, OATH Index No. 1981/10 at 6 (July 23, 2010) (citations omitted), *adopted in part, rejected in part*, Comm'r Dec. (Dec. 1, 2010), *modified on penalty*, NYC Civ. Serv. Comm'n Item No. CD 11-81-M (Oct. 31, 2011). Furthermore, where an employee's conduct involves "marginal situations where there is de minimis impact or offense," this tribunal has dismissed misconduct charges. *Id.* at 6–8.

Where the alleged misconduct consists of falsification of time or attendance records, "petitioner must show that respondent deliberately made false entr[ies]." *Health & Hospitals Corp. (Bellevue Hospital Ctr.) v. Garces*, OATH Index No. 1617/08 at 4 (June 27, 2008), *modified on penalty*, Assoc. Exec. Dir. Dec. (Aug. 12, 2008). A false statement charge requires some proof of intentional or knowing falsehood and intent to deceive. *See, e.g., Callabross*, OATH 1981/10 at 8–9 (finding that correction officer made false entry when she admitted she was away from her post when she made a logbook entry indicating she was at her post).

The credible evidence shows that on March 8, 9, 11, 17, 21, 29, and 31, 2022; April 4 and 7, 2022; May 12 and 13, 2022; June 23, 2022; July 21, 2022; and August 3, 2022, respondent entered arrival times in CityTime that were earlier than the times reflected in the building access-control records. Those discrepancies establish that respondent's CityTime entries did not correspond precisely with her physical entry into her assigned workstation on those dates. The issue then is whether respondent intended to deceive the Department when she made time entries for those dates with her timesheet entries.

Respondent credibly testified that her workday did not necessarily begin when she physically swiped into a MetroTech building, but rather when she began performing work-related

duties. She explained that, due to her role supporting critical public safety systems, she was on call 24 hours a day and frequently received work-related calls early in the morning, late at night, and while commuting to work. Respondent routinely answered those calls and began addressing operational issues immediately, including while traveling to work or before entering the building. For years, respondent had been permitted to work remotely as needed, particularly in light of her health issues, until mid-April 2022, and she often performed EMS CAD-related work from home or while in transit.

Respondent and Ms. Deol testified that the access-control swipe records reflect only physical entry into a building and do not capture work performed by respondent remotely, during a commute, or prior to entering secured areas. Respondent credibly explained that the MetroTech campus consists of multiple buildings and secure locations, where swipes may reflect group entry or be triggered by another individual holding a door, further limiting their reliability as a precise measure of when a person entered the building or an area within the building. As an example, respondent described March 17, 2022, when she began working in response to calls concerning critical EMS operations before physically entering the building, and she supported that testimony with contemporaneous call-log evidence reflecting work activity earlier than the recorded swipe time.

Over the course of the hearing, it became apparent that respondent is deeply committed to her work, often cancelling planned leave and responding to urgent operational needs outside standard hours (Tr. 760). I credit her testimony that she did perform work outside traditional work hours on some occasions and that she believed such work could justify recording an earlier start time. However, the record does not establish that respondent was performing work prior to her arrival on most of the charged dates, nor does it support a finding that all of the discrepancies between her CityTime entries and building access records were attributable to work performed before she entered the building. While respondent identified several examples of pre-arrival work activity, she did not provide testimony or other evidence substantiating such work on most of the charged dates. In many instances, the discrepancies exceeded one hour. On this record, respondent's general assertion that she often worked before arriving is insufficient to explain discrepancies of that magnitude without supporting evidence tied to the specific dates at issue.

There is also no evidence that respondent was granted an exception to the Department's time and leave policies requiring employees to accurately record their arrival times, nor is there evidence that she sought permission from Ms. Deol to record a start time based on work performed prior to her physical arrival. Even assuming respondent occasionally performed work before arriving at MetroTech, the applicable policy required either accurate reporting of arrival time or supervisory approval for a different reporting method.

Accordingly, while I credit that respondent did at times perform work outside normal hours, the evidence establishes that her CityTime entries were not consistent with Department timekeeping requirements. I therefore find that petitioner has met its burden of proof.

Specifications 1 through 14 should be sustained.

Failure to request leave in accordance with Department Time and Leave policy (Specifications 16, 17, and 18)

The next three Specifications involve time and leave violations and insubordination where respondent is alleged to have failed to follow a directive and agency policy for requesting leave.

Petitioner alleges that on or about December 10, 2021, at approximately 3:35 p.m., in response to a scheduling inquiry from her supervisor, Ms. Deol, respondent sent an e-mail to Ms. Deol and members of the BTDS team advising them that she planned to take time off and arrive to work late, "[v]ery late" the remainder of the work week (Pet. Ex. 13 at 2). Respondent then sent an e-mail to the December 10 thread clarifying her e-mail about arriving late the remainder of the week. In that e-mail she wrote in part, "Sorry if this was unclear. I am coming in late and leaving early and taking an hour or three for lunch every day this week" (*Id.*). Ms. Deol replied, thanking respondent for her hard work and advising respondent that she was required to inform Ms. Deol in advance when she expected to arrive or depart outside normal work hours and, unless there was an emergency, when she intended to work overtime (*Id.* at 1). Respondent replied, informing Ms. Deol that overtime work has been necessary to complete the work for the Windows 10 upgrade (*Id.*). Respondent also expressed that she was unaware of Ms. Deol's requirement to seek approval in advance (*Id.*).

On December 16, 2021, at 10:41 a.m., Ms. Deol wrote an e-mail to respondent requesting to meet that day to discuss the job posting for the new EMS CAD manager (Pet. Ex. 12).

Respondent replied, advising that she would be available at 5:00 p.m. (*Id.*). Ms. Deol replied

asking if she was available at 11:00 a.m. (*Id.*). Respondent replied that she would be doing her laundry at that time (*Id.*).

In support of the charge, petitioner submitted copies of the e-mail exchanges between respondent and Ms. Deol on December 10 and 16, 2021 (Pet. Exs. 12, 13). Ms. Deol testified that respondent's e-mails on December 10 and 16 exemplified respondent's view of time and leave. According to Ms. Deol, respondent did not submit leave requests in the manner required by agency policy; instead, she sent declarative e-mails informing Ms. Deol that she would be taking leave (Tr. 248). Ms. Deol testified, "no requests were made. Usually there'll be a FYI, information only" (*Id.*). Ms. Deol also testified that she expected all of her supervisees, including respondent, to make requests for leave and overtime in advance (Tr. 227–28).

At trial, when asked why she sent the December 10 e-mail, respondent stated that it was a "joking e-mail" that she had sent in the past after completing large projects (Tr. 1125). Respondent further explained that she had completed the Windows 7 to Windows 10 upgrade which required "working round the clock for weeks" (*Id.*). As a result of the hours she had worked, she "canceled vacation, holiday plans with my family, didn't have groceries in the refrigerator, had mountains of laundry in my apartment, I canceled doctor's appointments" (*Id.*). So, when she and her team completed the parts of the project for which they were responsible, she sent the e-mail as a way to congratulate the team (Tr. 1124–25).

Respondent also testified that she and Ms. Deol had an informal arrangement about time and leave (Tr. 1125). To corroborate this, respondent submitted several e-mail exchanges in 2020 and 2021 where she advised Ms. Deol of her need to take unplanned leave (Rep. Ex. I-1–I-32). In one e-mail, dated December 31, 2020, respondent wrote to Ms. Deol, "I will be working a half day today. I had to work late last night . . . so I'm just going to take some comp time today" (Resp. Ex. I-6). Respondent's timesheet for the day was approved (Pet. Ex. 39). In another e-mail, dated July 24, 2021, respondent wrote to the BTDS team and Ms. Deol, "[n]ow that firecad is done I'm taking time off to do all the things that were put off for months for FireCAD" (Resp. Ex. I-18). Three days later, respondent sent another e-mail to Ms. Deol, advising that she "will be out most of the week for vacation and [doctor's appointments]. [I] am working an hour or two some days to take care of a few things I didn't or couldn't reschedule and didn't want to skip" (Resp. Ex. I-19). There was no evidence that Ms. Deol replied to these e-mails.

Respondent further supported this assertion with multiple contemporaneous e-mail exchanges reflecting a flexible and informal approach to time, leave, and scheduling between herself and Ms. Deol. In one exchange, respondent asked Ms. Deol whether she should begin requesting overtime approval in advance, to which Ms. Deol replied, “[y]ou do not need to submit [a] request every time. I am aware of your work load on [a] daily basis, just make sure to put in citytime comment” (Resp. Ex. I-5). Other exchanges reflected similar informality and apparent approval of respondent’s deviations from ordinary scheduling practices. For example, when respondent advised that she would likely be working overtime, Ms. Deol responded approvingly (Resp. Ex. I-8). When respondent advised that she intended to take a long lunch and nap due to a reaction to medication, Ms. Deol replied, “take rest, Carla!” (Resp. Ex. I-9). In another exchange, respondent advised that she was taking a friend recovering from spinal surgery for a walk, and Ms. Deol responded, “[En]joy and forget all about work for a day” (Resp. Ex. I-26). Similarly, when respondent advised that she had been up late working on a system restart and would take her first two meetings from home, Ms. Deol instructed her to “work from home today” (Resp. Ex. I-28). When respondent advised that she would be late because she was preparing for an annual rowing event, Ms. Deol responded, “[g]lad you are [e]njoying!” (Resp. Ex. I-29). Finally, when respondent advised that she may not come in because she believed she had food poisoning, Ms. Deol responded, “[f]eel [b]etter and continue to work from home” (Resp. Ex. I-31). These exchanges corroborate respondent’s testimony that Ms. Deol routinely approved flexible scheduling arrangements and informal deviations from ordinary time and leave procedures.

Respondent’s testimony and the statements she made to Ms. Deol by e-mail, taken as a whole, establish a defense of condonation and waiver for her practice of taking leave or modifying her schedule following late-night work sessions and the completion of major project milestones. Charges of misconduct may be deemed waived where a supervisor knowingly condones the conduct giving rise to the charges and fails to inform the employee that such conduct is prohibited or will result in discipline. *See Financial Information Services Agency v. Leung*, OATH Index No. 2115/13 at 9–10 (Apr. 9, 2014), *aff’d*, NYC Civ. Serv. Comm’n Case No. 2014-0510 (Jan. 20, 2015). The doctrine is well-recognized: an agency may not permit an employee to believe that a practice is acceptable and later reverse course to impose discipline for the same practice. *See, e.g., Dep’t of Environmental Protection v. Critchlow*, OATH Index No. 709/07 at 12 (Mar. 5, 2007); *Dep’t of*

Parks & Recreation v. Wilson, OATH Index No. 398/91 at 3–4 (May 3, 1991); *Fahey v. Kennedy*, 230 A.D. 156, 159 (3d Dep’t 1930).

“Condonation and waiver” constitute an affirmative defense, which respondent bears the burden of establishing. See *Health & Hospitals Corp. (Bellevue Hospital) v. Olosunde*, OATH Index No. 262/05 at 3 (June 15, 2005); *Dep’t of Correction v. Calligaro*, OATH Index No. 925/95 at 8 (Apr. 25, 1995). To prevail on this defense, respondent must demonstrate that the conduct charged as misconduct was part of a regular practice that was known to and accepted by her supervisor. See *Dep’t of Correction v. Heredia*, OATH Index No. 1070/91 at 12 (Aug. 23, 1991). If respondent makes a prima facie showing of condonation or waiver, petitioner may rebut the defense by establishing that the conduct was fraudulent, meaning that respondent knowingly misrepresented a material fact with the intent to deceive. See *Olosunde*, OATH 262/05 at 4.

Here, while agency policy generally requires employees to request leave in advance and to record work hours in accordance with established procedures, the record demonstrates that Ms. Deol was aware of, and acquiesced to, respondent’s longstanding scheduling practices during the relevant period. In an e-mail sent to Ms. Deol on December 16, 2021, respondent asserted that she had historically exercised flexible scheduling in connection with after-hours work and project deadlines. Petitioner presented no evidence that rebutted that assertion. Respondent further testified, and I credit, that she and Ms. Deol operated under an informal understanding regarding respondent’s schedule during this period (Tr. 1125).

Respondent’s and Ms. Deol’s informal understanding is corroborated by documentary evidence. Respondent’s timesheet for the week ending December 18, 2021, reflects significant flexibility in her reported hours and was approved by Ms. Deol (Pet. Ex. 39). Additional support appears in a December 6, 2021, e-mail exchange in which respondent informed Ms. Deol that she planned to finish the workday from home; in response, Ms. Deol raised no objection and instead advised respondent that her raise had been approved (Pet. Ex. 9). Taken together, the evidence establishes that, during the relevant period, respondent’s flexible scheduling practices were known to and accepted by her supervisor.

Although Ms. Deol’s position regarding respondent’s scheduling practices later changed, the evidence surrounding the dates at issue, December 10 and December 16, 2021, establishes a prima facie defense of condonation and waiver. Petitioner did not present evidence that

respondent's statements or practices during this period were fraudulent. Accordingly, Specifications 16, 17, and 18 should be dismissed.

Misuse of Sick Leave (Specifications 39–45)

The next seven specifications pertain to what petitioner has characterized as respondent's misuse of sick leave. According to petitioner, on or about and between March 10 and July 27, 2022, respondent violated the Department's time and leave policy. On seven occasions, respondent is alleged to have requested less than the minimum sick leave permissible.

The Department's time and leave manual requires a minimum charge of one hour to sick leave (ALJ Ex. 3). Respondent's timesheets for March 10, April 6 and 28, May 3 and May 9, June 30, and July 27, 2022, reflect that she requested less than one hour of sick leave on each of these dates (Pet. Ex. 39). Each timesheet was approved as "approved final" by her supervisor, Ms. Deol (*Id.*; Tr. 429). On cross-examination, Ms. Deol acknowledged that she did not closely review respondent's timesheets before approving them (Tr. 479).

Respondent testified that she suffers from World Trade Center–related cancer and experiences chronic fatigue and stamina limitations as a result (Tr. 865). She explained that she had been encouraged to take "a lot of time off" to preserve her health and well-being (*Id.*). Respondent explained that under the Zadroga Act, she would not be charged sick leave when taking a full day for 9/11-related illness, but that partial-day absences required the use of regular sick leave (*Id.*). Respondent testified that on days when her workload was substantial, or after extended evening work, she managed her time by taking short periods of sick leave when she became unable to continue working (Tr. 866).

Respondent stated that any sick-leave entries under one hour "would be because I either had a doctor's appointment . . . on my lunch hour, or I had a doctor's appointment before work, and it ran a little bit long," causing her to arrive late (Tr. 1009). She also described the impact of her medical condition on her work capacity:

And even when I'm working from home, sometimes I just—I can't—I can't work anymore. I have to rest. I have to . . . elevate my feet and hydrate or lie down or . . . I can't think, I get brain fog. And I don't really want to be paid for time where I'm not working. So, . . . even if it's like 15 minutes before the end of the day and I just realized, like, I can't do one more thing, I take sick leave and go home.

(Tr. 1009).

Respondent testified that on March 10, 2022, she used thirty minutes of sick leave in the middle of the day to extend her lunch hour for a cancer screening appointment (Tr. 1014). She could not recall the reason for the April 6, 2022, entry, but explained that on April 28, 2022, she requested fifteen minutes of sick leave because she was “too exhausted to make it through the rest of the [day]” (Tr. 1015). For May 3 and May 9, 2022, respondent stated that she had worked through lunch and became too fatigued to continue working, so she went home early (Tr. 1016–17). During her testimony, respondent also disclosed that she had sustained a cardiac issue prior to May 9, 2022 (Tr. 1017).

For June 30, 2022, respondent testified that she “wasn’t well enough to work” and received approval to work remotely (Tr. 1017). Her time records for that day reflect one hour of work from 10:35 a.m. to 11:35 a.m. (Pet. Ex. 39), in addition to a combination of annual leave and sick leave. Respondent explained that she had exhausted her sick-leave balance during this period and therefore used annual leave to cover the remainder of the day (Tr. 1017–18). Finally, respondent testified that on July 27, 2022, she felt “too weak to make it through the day” and used annual leave because she had no remaining sick leave (Tr. 1018).

Respondent’s testimony and the documentary evidence provide a consistent and unrefuted explanation for each partial-hour sick-leave entry during this period. Ms. Deol’s approval of the corresponding timesheets, despite her admitted lack of close review, supports the conclusion that respondent’s unique health issues led to her use of sick leave for less than one hour. *See Leung*, OATH 2115/13 at 9-10. Furthermore, there is nothing in the record to suggest that respondent’s request for annual leave on July 27, 2022, was prohibited by the Department’s time and leave policy. Accordingly, these specifications should be dismissed.

Failing to provide sufficient notice of lateness (Specifications 46, 49)

Petitioner alleges that on May 19, 2022, at approximately 10:12 a.m., 12 minutes after respondent was due for work and on November 17, 2022, at approximately 10:20 a.m., 20 minutes after respondent was due for work, respondent e-mailed Ms. Deol to advise that she would be arriving late to work (Pet. Ex. 28). According to petitioner, respondent’s timesheet for May 19, 2022, reflects that she subsequently charged seven hours of sick leave (Pet. Ex. 39). Petitioner maintains that, under the FDNY Time and Leave Policy, employees are required to notify their supervisor of an illness at least one hour before their scheduled reporting time (Pet. Br. at 4–

5). According to petitioner, respondent's scheduled start time was 9:00 a.m., with an authorized flex-time window between 9:00 a.m. and 10:00 a.m. (Tr. 226). Petitioner contends that respondent's 10:12 a.m. notification did not satisfy the advance-notice requirement and therefore constituted a failure to provide sufficient notice in violation of agency policy.

Ms. Deol testified that the Department requires employees to notify their supervisors at least one hour prior to the start of their shift if they expect to arrive late (Tr. 385). At 10:12 a.m. on May 19, 2022, Ms. Deol received an e-mail from respondent, notifying her that respondent expected to arrive at work late (Tr. 386; Pet. Ex. 28). According to Ms. Deol, respondent's shift began at 9:00 a.m. with flex-time allowing her to arrive until 10:00 a.m. (Tr. 385). She also testified that she received no other notification from respondent prior to 10:12 a.m. that morning (Tr. 386). Respondent's timesheet for May 19, 2022, shows that she requested a full day of sick leave (Pet. Ex. 39). Ms. Deol also testified that on November 17, 2022, at 10:20 a.m., she received an e-mail from respondent stating, "Train running slowly will be in by 1045" (Tr. 415-16; Pet. Ex. 35).

Respondent testified that during this period it was her practice to e-mail her supervisors when she was going to arrive late to work or be out sick (Tr. 1020). Respondent did not offer additional testimony concerning the circumstances of May 19 or November 17, 2022, and no further evidence was presented concerning her actions.

The evidence establishes that on both dates, respondent did not notify her supervisor at least one hour before the end of her flex-time reporting window to advise that she was unable to report to work on time. The record further shows that respondent did not report to work on May 19, 2022, and charged seven hours of sick leave. On this record, petitioner has met its burden of proving that respondent failed to provide timely notice as required by agency policy. Accordingly, Specifications 46 and 49 are sustained.

Discourtesy and Insubordination (Specifications 15, 19-38, 47-51)

Petitioner alleges that, on multiple occasions between December 2021 and December 5, 2022, respondent engaged in misconduct as set forth in Specifications 15, 19 through 38, and 47 through 51 (ALJ Ex. 1). According to petitioner, this misconduct included acts of insubordination, discourtesy, failure to comply with the FDNY social media policy, disruptive behavior, conduct tending to bring the Department or the City of New York into disrepute, and conduct prejudicial to

the good order, efficiency, or discipline of the FDNY. Petitioner further alleges that respondent used written or spoken language, or introduced communications in the workplace, that were improper, discourteous, offensive, abusive, or otherwise inconsistent with the standards of professional conduct required by the Department (*Id.*).

Petitioner's Civilian Code of Conduct requires employees to "comply with supervisory instructions," and "[c]omply with the requirements of work assignments" (ALJ Ex. 2). To establish insubordination, petitioner must prove by a preponderance of the credible evidence that: a supervisor issued an order to respondent; the order was clear and unambiguous in its content; and, having heard the order, respondent willfully refused to obey. *See Transit Auth. v. Wong*, OATH Index No. 1866/08 at 16 (Aug. 28, 2008); *Health & Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. Muniz*, OATH Index No. 1666/05 at 8 (Oct. 17, 2005). A supervisor's directive need not be made in definitive language containing the word "order" so long as a clear and unambiguous request was issued. *Wong*, OATH 1866/08 at 16; *Dep't of Sanitation v. David*, OATH Index No. 766/07 at 5 (Jan. 25, 2007), *modified on penalty*, NYC Civ. Serv. Comm'n Item No. CD 07-101-M (Oct. 25, 2007). Likewise, respondent's refusal need not be expressed; it can be inferred from a deliberate, passive failure to comply. *See Health and Hospitals Corp. (Correctional Health Services) v. LaSane*, OATH Index No. 1165/02 at 6 (Aug. 8, 2002) (charge sustained where respondent failed to report for a fitness-for-duty examination while seeking advice from her union).

Under the principle of "obey now, grieve later," employees have an obligation to obey the order and rely on the formal grievance machinery available. *See Ferreri v. New York State Thruway Auth.*, 62 N.Y.2d 855, 856-57 (1984). There are, however, exceptions to this principle. *See Transit Auth. v. Wagh*, OATH Index No. 517/02 at 13 (July 11, 2002), *modified on penalty*, Comm'r Dec. (Aug. 8, 2002). An employee need not obey an unlawful order, an order that is beyond the scope of a supervisor's authority, or an order that poses an imminent threat to health or safety. *Id.* at 13-14. Those exceptions to "obey now, grieve later," are affirmative defenses that respondent must prove by a preponderance of the credible evidence. *Human Resources Admin. v. Minima*, OATH Index No. 1532/01 at 13-18 (May 16, 2002). Regarding discourtesy, petitioner's Civilian Code of Conduct requires employees to "comply with supervisory instructions," "[c]omply with the requirements of work assignments," and prohibits employees

from using “written or spoken language . . . that is . . . discourteous” (ALJ. Ex. 2). Not every workplace disagreement is misconduct, “even when voices are raised and emotions are vented.” *Health and Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. Freeman*, OATH Index No. 1399/06 at 9 (July 20, 2006). Employees may disagree with supervisors within the bounds of decorum and discretion. *Health & Hospitals Corp. (Lincoln Medical & Mental Health Ctr.) v. Thomas*, OATH Index No. 531/04 at 5 (May 4, 2004). Relevant factors include the dispute’s context, substance, tone, and duration. *See Admin. for Children’s Services v. Rucando*, OATH Index No. 633/05 at 8 (Apr. 29, 2005).

These principles also apply to e-mails; disagreements are permitted but they must remain within the range of acceptable workplace behavior. *Compare Dep’t of Buildings v. Lamitola*, OATH Index No. 871/12 at 9 (Mar. 5, 2012) (discourtesy proved where, in response to an e-mail ordering a medical exam, the employee replied, “[W]hat makes you think you’re entitled to demand that I take a medical physical with a doctor of your choosing?” and that his medical condition was “none of your business”) *with Dep’t of Correction v. Smith*, OATH Index No. 667/13 at 12 (July 19, 2013), *aff’d*, NYC Civ. Serv. Comm’n Case No. 35546 (May 6, 2014) (though refusal to perform a task is misconduct, expressing concern about out-of-title work and writing, “This is not my job,” on a note attached to an e-mail was not misconduct); *see also Transit Auth. v. Felix*, OATH Index No. 1206/09 at 4 (June 16, 2009) (while the tone of an e-mail, including the comment, “I don’t see why I have to do all this unnecessary work,” could have been more accommodating, it was not rude or insubordinate).

EMS CAD Manager Job Posting (Specification 15)

In Specification 15, petitioner alleges that on December 7, 2021, at approximately 2:28 p.m., respondent sent an e-mail to her supervisees that contained false statements and misrepresented her prior conversations with Mr. Thottam and Ms. Deol (ALJ Ex. 1 at 3–4).

Respondent testified that on December 3, 2021, she received an e-mail indicating that a job posting had been issued for an EMS CAD Manager, which was also her job title (Tr. 986). Confused by the listing, respondent contacted Ms. Deol for clarification and later that day e-mailed both Ms. Deol and Mr. Thottam requesting that the posting be taken down until the Windows 10 upgrade was completed and all relevant parties had an opportunity to discuss the hiring decision (Tr. 987; Pet. Ex. 10).

According to Ms. Deol, she and Mr. Thottam had previously met with respondent in Mr. Thottam's office to discuss the need to hire additional personnel to support the EMS CAD environment (Tr. 216, 231–32). During that meeting, it was explained that respondent would continue managing the legacy EMS CAD system while a new hire would be responsible for supporting the replacement EMS CAD platform (Tr. 216). Following respondent's December 3 e-mail, Mr. Thottam replied by saying, "We talked about this already when you were in my office" (Pet. Ex. 10). Respondent responded that she disagreed with his characterization of the meeting and requested another discussion; no meeting was scheduled (*Id.*). Mr. Thottam instead advised that the issue could be revisited after the Windows 10 upgrade was completed (*Id.*).

On December 7, 2021, at approximately 2:28 p.m., respondent sent an e-mail to members of her team (Tr. 234–35; Pet. Ex. 5). In it, she acknowledged that a meeting with Ms. Deol and Mr. Thottam had occurred and wrote that it had been agreed that the EMS CAD unit needed additional staffing (Tr. 235). She further stated that she had been told she would continue "managing the replacement of the EMS CAD system" (*Id.*; Pet. Ex. 10). Respondent indicated that the newly posted job announcement was a surprise to her, suggested that it might signal that she should seek other employment, and advised her supervisees that she would be applying for the job herself while encouraging them to consider applying as well (*Id.*).

Specification 15 alleges that respondent's December 7 e-mail contained false statements and misrepresented the substance of her prior meeting with management (ALJ Ex. 1 at 3–4). The evidence, however, reflects a divergence in recollection rather than a deliberate misrepresentation. Both Ms. Deol and Mr. Thottam testified that respondent was not told she would manage the replacement CAD system. Instead, they testified that the new hire would assume that role while respondent continued with the legacy system. Respondent, by contrast, testified that her understanding of the meeting was that she would remain responsible for overseeing the replacement CAD project, and that the job posting came as an unexpected development.

I credit both parties' testimony here and find that respondent's December 7 e-mail reflects her interpretation of the meeting, not an intentional misstatement or a proven falsehood. The record does not establish that respondent knowingly misrepresented material facts or

intentionally misled her supervisees. Instead, the evidence shows a misunderstanding or divergent interpretation of the meeting's substance between respondent and her supervisors.

Petitioner has not proven by a preponderance of the evidence that respondent intentionally made false statements in her December 7, 2021, e-mail. Accordingly, Specification 15 is not sustained.

Criticisms of Department leadership regarding EMS CAD upgrade (Specifications 19, 20, 23, 33)

Specifications 19, 23, and 33 arise from a series of written communications sent by respondent between January and May 2022, during a period when the Department was planning and implementing a major upgrade to its EMS CAD system (ALJ Ex. 1 at 4, 5, 8). Petitioner alleges that, through these e-mails and related communications, respondent criticized management's decisions concerning the EMS CAD project, including issues related to procurement, project governance, and the scope of respondent's role (*Id.*). According to petitioner, these communications, directed to supervisory staff, other FDNY personnel, and, in certain instances, outside vendors, were insubordinate, discourteous, disruptive, and inconsistent with supervisory directives governing appropriate communication channels during the EMS CAD procurement and implementation process (*Id.*). Petitioner further contends that respondent's conduct was disruptive or reasonably expected to be disruptive of agency operations, prejudicial to the good order, efficiency, or discipline of the Department, and, as to the social media posts, violative of the Department's social media policy (*Id.*).

On January 18, 2022, Ms. Deol sent an e-mail to Paul Martin, the account manager for Peraton, the vendor selected to develop the new EMS CAD system, advising that the Department had decided to proceed with a "Big Bang" rollout of the new system (Pet. Ex. 18 at 4). Respondent and Mr. Thottam were copied on that message. Mr. Thottam testified that a Big Bang rollout involves shutting down the existing system and deploying the new system with all functionalities at once, as opposed to an incremental approach in which features are introduced in stages (Tr. 589).

Several hours later, respondent replied by e-mail, copying Mr. Martin, and expressed disagreement with the Big Bang approach (Pet. Ex. 18 at 1-2). Ms. Deol responded to respondent's e-mail the following day, excluding Mr. Martin, and admonished respondent for the substance of the e-mail and advised respondent that if she had any concerns, "please bring it to

my attention and DO NOT email others” (*Id.*). In that e-mail, Ms. Deol also noted that a second supervisory conference would be scheduled (*Id.*). During trial, Ms. Deol testified that respondent’s messages to people outside the agency caused conflicts in messaging and created the appearance of incompetence (Tr. 289–90).

On January 22, 2022, respondent took her complaints to the public, posting on her personal Facebook page a cartoon depicting four older men and a dinosaur sitting around a boardroom table with the caption, “If anyone can get us out of our rut, it’s Ole Dinosaur here” (Pet. Ex. 34 at 4). Above the cartoon, respondent made several statements criticizing Department leadership’s decisions during the EMS CAD upgrade (*Id.*). Respondent wrote, in part, “for the last 4 years I’ve spent more time cleaning up messes made by dinosaurs than I have moving forward” and that Department leadership was turning the EMS CAD upgrade “into a mess” (*Id.*). In the post, respondent also expressed hope that “all the dinosaurs wallowing in their tar pits,” a reference to Department leadership, would be replaced by an incoming administration (*Id.*). She expressed her frustration by noting that “[e]ven if someone great comes on board . . . and lets me clean this mess up, I don’t think there will be time for me to get the project back on track before I retire” (*Id.*). Respondent ended the post by stating, “This is killing me.”

Respondent testified that she did not intend to offend anyone with her post, and that the post was intended to invoke advice from her Facebook community about a potential job prospect (Tr. 990–91). She also explained that the message of the cartoon related to what she referred to during her testimony as “dinosaur mentality,” which she defined as “applying this old methodology of managing business that doesn't really apply to how you manage technology in today's environment” (Tr. 991).

On January 28, 2022, Ms. Deol conducted a supervisory conference with respondent concerning respondent’s communications (Tr. 375). Ms. Deol testified that she instructed respondent not to include other Department employees or outside parties in e-mails addressing internal BTDS matters, and that concerns regarding technology decisions were to be raised directly with her or with Mr. Thottam, who would determine whether broader distribution was appropriate (*Id.*). Ms. Deol memorialized that directive in a written supervisory memorandum dated January 28, 2022 (Pet. Ex. 21).

On January 31, 2022, Mr. Thottam sent a message to Mr. Martin regarding the itinerary and substance of future meetings with Mr. Martin's team (Pet. Ex. 22). On February 3, 2022, respondent replied to the e-mail, criticizing Ms. Deol's and Mr. Thottam's decision making and management of the EMS CAD upgrade project (*Id.*). In the e-mail, respondent stated that, "[l]oad balancing was designed by people who did not know how CAD worked, did not involve the CAD team in the design, [and] would not change the design to better integrate with CAD" (*Id.*). She also characterized work ordered by "management" as "a wasted effort" (*Id.*). The e-mail was sent to multiple recipients, including Mr. Martin (*Id.*).

On May 13, 2022, respondent sent an e-mail to Ms. Deol and Mr. Thottam concerning the EMS CAD project, copying multiple Department employees whom Ms. Deol described as stakeholders or users of the system (Pet. Ex. 26; Tr. 371–72). In that communication, respondent again objected to management's decisions regarding project leadership and vendor access and complained that she had not been permitted to participate in discussions or review project documentation (Pet. Ex. 26).

As noted above, an insubordination charge based on failure to follow a directive requires proof that the employee knowingly disobeyed a clear and unequivocal supervisory instruction. Where management expectations are evolving or not clearly articulated, a finding of knowing disobedience is not warranted.

Here, the documentary record demonstrates that management's expectation regarding the scope of respondent's permissible communications was not clearly and unequivocally articulated until it was memorialized in the January 28, 2022, supervisory conference memorandum. *See Wong*, OATH 1866/08 at 16–17. Although Ms. Deol testified that during a supervisory conference on January 5, 2022, she instructed respondent not to include other Department employees or outside parties in internal communications, the contemporaneous memorandum memorializing that conference does not reflect such an instruction and instead focuses on the tone of respondent's communications (Pet. Ex. 16). Furthermore, respondent's reply e-mail to Ms. Deol's January 5 supervisory meeting memorandum contains a recitation of the instructions issued by Ms. Deol during that conference, and it is also silent with respect to respondent's practice of including Department employees and vendors in e-mails related to BTDS matters (Pet. Ex. 17).

Although Ms. Deol's e-mail to respondent on January 19, 2022, wherein she advised respondent not to "email others" any concerns with the EMS CAD upgrade plan, the scope of the directive is ambiguous. By contrast, the January 28, 2022, supervisory memorandum is a clear expression of Ms. Deol's concern with respondent's practice of including and directly e-mailing Department employees and people outside of the agency about all BTDS matters, and it contains a clear directive that she refrain from doing so going forward (Pet. Ex. 21).

With respect to Specification 19, the conduct at issue occurred before the issuance of both the January 19 and the January 28 directives. Under these circumstances, petitioner did not establish that respondent knowingly disobeyed a clear supervisory instruction. Accordingly, Specification 19 is therefore not sustained on a theory of insubordination.

Specifications 23 and 33 stand upon a different footing. Both communications occurred after the January 28, 2022, supervisory conference, during which Ms. Deol issued a clear directive governing communication about EMS CAD matters. Notwithstanding that directive, respondent included Mr. Martin and multiple Department employees in her February 3 and May 13 e-mails concerning the EMS CAD project. While respondent characterized those recipients as stakeholders, Ms. Deol credibly testified that such inclusion was inconsistent with the directive she had issued. Under these circumstances, petitioner established that respondent failed to comply with a clearly articulated supervisory instruction. Specifications 23 and 33 are therefore sustained.

Petitioner also characterizes respondent's written communications in Specifications 19, 23, and 33 as discourteous. Having resolved Specifications 23 and 33 under the charge of insubordination, I find no need to resolve the issue of whether the contents of the February 3 and May 13 e-mails constitute discourtesy.

As noted above, the principles surrounding workplace disagreements apply to e-mail communications. *See Smith*, OATH 667/13 at 21–26.

Here, respondent's e-mail to Ms. Deol, Mr. Martin, and others on January 18 reflects forceful disagreement with management's decisions regarding the structure and oversight of the EMS CAD replacement project. Respondent criticized the decision to assign her and the BTDS team to the role of subject-matter expert rather than to leadership and expressed her belief that this approach increased risk, cost, and delay. She further warned that the project was "set up for

failure” if her expertise was not utilized at the outset. The tone of the e-mail was sharp and emphatic, and respondent’s language reflected frustration with management’s judgment.

Nevertheless, when viewed in context, the communication does not rise to the level of discourtesy. Respondent’s criticisms were directed at project planning and technical decision-making, not at the personal character, integrity, or competence of her supervisors. The e-mail articulated respondent’s professional assessment of project risk and her disagreement with management’s approach, rather than employing contemptuous, demeaning, or insulting language. *Cf. Human Resources Admin. v. Bao*, OATH Index No. 933/24 at 31 (June 28, 2024), *adopted*, Comm’r Dec. (Oct. 9, 2024) (finding respondent’s e-mails rude and disrespectful despite his belief that he gave accurate assessments of his supervisor's job performance). While the message could reasonably be viewed as ill-advised, it falls within the range of permissible workplace disagreement, particularly where the communication concerns substantive operational issues rather than personal attacks.

Accordingly, petitioner did not establish by a preponderance of the evidence that respondent’s January 18, 2022, e-mail constituted discourteous conduct as alleged in Specification 19.

Regarding respondent’s Facebook post on January 22, 2022, the credible evidence establishes that respondent violated the Department’s social media policy when she publicly criticized the Department leadership’s decisions during the EMS CAD upgrade. The Department’s social media policy “prohibits employee conduct in both an official capacity and in an unofficial capacity that could reasonably be expected to disrupt the workplace or agency operations or bring the FDNY or its employees into disrepute” (Resp. Ex. RR). The policy further identifies prohibited categories of online conduct, including “[d]isclosing non-public information” and “[p]ersonal attacks of any kind” (*Id.*).

Respondent’s statements, although not directed at any one person, were personal attacks, made on a platform viewed by people outside of the agency, which could reasonably be expected to diminish confidence in management and call into question the judgment of Department leadership. The assertion that Department leadership had turned the EMS CAD upgrade into “a mess” undermines the competence and integrity of respondent’s superiors. Taken together, respondent’s posts conveyed negative and critical characterizations of Department leadership to a

public audience, in a manner that could reasonably be expected to bring the Department and its leadership into disrepute. Respondent's attempt to explain the basis of the post was unconvincing and the evidence that EEO took no action on the post is given no weight in this decision since the charges before this tribunal are not within the purview of EEO. Respondent's statements, therefore, violated the Department's social media policy and Specification 20 should be sustained.

E-mail criticisms of FDNY leadership regarding personnel decisions (Specifications 21, 22)

In Specification 21, petitioner alleges that on or about January 25, 2022, respondent sent an e-mail to several individuals, including persons within the Department as well as members of other agencies and outside vendors, criticizing staffing decisions of her superiors and of the FDNY Commissioner (ALJ Ex. 1 at 5). Petitioner further alleges in Specification 22 that the following day, on January 26, 2022, respondent sent an e-mail to Ms. Deol requesting that a scheduled supervisory conference be postponed (*Id.*). According to petitioner, the content and tone of the e-mails were disruptive, or reasonably expected to be disruptive of workplace or agency operations; tended to bring the FDNY or the City of New York into disrepute; and were prejudicial to the good order, efficiency, or discipline of the Department (*Id.*).

In support of the charge, petitioner submitted copies of two e-mail chains covering the relevant period. On January 24, 2022, respondent received a calendar invite from Cacharel Greene to attend a supervisory meeting on January 26 (Pet. Ex. 19 at 3). On the date of the meeting, respondent requested by e-mail that the meeting be rescheduled, including statements critical of Department leadership and staffing decisions affecting the EMS CAD unit (*Id.* at 1–2). Respondent wrote in part:

[I] hope the new fire commissioner considers emd, ems, oma and the emscad system a priority and reverses this[C]utting our staff in half and taking a highly trained analyst with 10 years experience away from us so he can learn how to be a desktop technician is irresponsible and ridiculous

(*Id.* at 2). Respondent further wrote, "I'm curious to know what other unqualified non-desktop people from other units in btDs are being transferred to desktop, or is [it] only emscad that resources are being taken from at this critical time?" (*Id.*).

One day prior, on January 25, 2022, respondent sent an e-mail to employees at the Department of Information Technology and Telecommunications ("DoITT"), copying employees at Motorola, a vendor, wherein she made similar statements about personnel decisions made by

managerial staff (Pet. Ex. 20 at 1). After summarizing the personnel decision and expressing her discontent and bewilderment about the decision, respondent closed the e-mail with the following: “[M]y management hasn’t given me much detail on their vision on this yet, I’ll let you know if it becomes a risk for other projects we’re working on with DoITT that he is on.” (*Id.*).

Respondent’s e-mails here constitute misconduct. While expressing concerns related to Department personnel decisions is otherwise acceptable conduct for someone in a managerial role like respondent, characterizing a Department personnel decision as “irresponsible and ridiculous” as well as sharing disapproval of the decision with employees at another agency is disrespectful and undermines Department leadership’s competence and authority. *See Dep’t of Information Technology and Telecommunications v. Arocho*, OATH Index No. 1146/18 at 27–29 (Oct. 17, 2018), *aff’d*, NYC Civ. Serv. Comm’n Case No. 2019-0149 (Sept. 18, 2019) (finding misconduct where respondent, a DoITT employee, sent an e-mail to 40 people, including two ranking employees at the Department of Finance (“DOF”), and falsely accused her supervisor of trying to sabotage the DOF system).

Relocation to 9 MetroTech Center (Specifications 24, 26, 27, 29–32)

Petitioner alleges that between March 7, 2022, and April 4, 2022, respondent refused to comply with an order issued by her supervisor, Ms. Deol, directing her to relocate her office from 11 MetroTech Center to 9 MetroTech Center (ALJ Ex. 1 at 5). This refusal forms the basis of Specification 24.

In Specification 26, petitioner further alleges that on April 7, 2022, at approximately 10:26 a.m., respondent sent an insubordinate and disruptive e-mail to several BTDS employees, including her supervisors, Mr. Thottam and Ms. Deol (*Id.* at 5–6). Petitioner alleges in Specification 27 that, minutes after sending that e-mail, respondent sent another discourteous e-mail to Ms. Deol, questioning Ms. Deol’s competence and integrity (*Id.* at 6).

Petitioner further alleges in Specifications 29 and 30 that between December 2021 and May 16, 2022, respondent posted public commentary on social-media platforms criticizing the Department’s decision to transfer her from 11 MetroTech to 9 MetroTech, including the following statements: “This move will cause issues that could cost lives” and “Location is critical in 911. . . . My agency has moved me across the street with little notice and no explanation” (*Id.* at 6). In the posts, respondent is alleged to have described the importance of proximity to personnel and

systems within 911 facilities and asserted that “Delays of second[s] cost lives in our field,” and wrote that moving personnel critical to 911 operations had previously been rejected by past administrations once “the risks and impacts” were understood (*Id.* at 7). Petitioner further asserts that respondent wrote that she had informed management of these risks and issues but that they proceeded “without evaluating alternatives or any discussion of risk mitigation” (*Id.*). She questioned whether the move was an error or whether there was an “amazing benefit” she was unaware of that could justify the risk (*Id.*).

In Specification 31, petitioner alleges that on April 13, 2022, at approximately 12:22 p.m., respondent again questioned the decision to relocate her from 11 MetroTech to 9 MetroTech in an e-mail sent to Ms. Deol and copied to Mr. Thottam, Ms. Deol’s direct supervisor, and Deputy Commissioner Augier, Mr. Thottam’s supervisor (*Id.*). In this e-mail, respondent wrote, among other things, that “[w]hoever approved moving me to 9 Metrotech could not have been made fully aware of the risks and impacts” (*Id.*).

Finally, Specification 32 alleges that on April 13, 2022, at approximately 1:31 p.m., respondent bypassed her chain of command by e-mailing Mr. Augier directly (*Id.* at 7–8). In that message, respondent is alleged to have insinuated that her move to 9 MetroTech was either retaliation or an attempt to sabotage Commissioner Laura Kavanaugh (*Id.*). Petitioner further alleges that in the e-mail, respondent also questioned the judgment of Mr. Thottam (*Id.*).

The first Order to move (Early March 2022)

Ms. Deol testified that in early March 2022, she directed respondent to relocate her office from 11 MetroTech to 9 MetroTech. According to Ms. Deol, the two buildings are adjacent to each other, but the distance created communication issues between herself and respondent as well as causing challenges in her ability to monitor respondent’s attendance (Tr. 331). The move was intended to address those issues (*Id.*).

Prior to issuing the order, Ms. Deol consulted Mr. Thottam (Tr. 326). After receiving the go-ahead from Mr. Thottam, Ms. Deol gathered information to determine whether the move would negatively impact BTDS operations (*Id.*). She testified that the two concerns that she sought to determine were whether the move would impact respondent’s daily tasks or her ability to address emergencies:

Then I made sure any of the systems can be impacted or not if Carla Murphy moves to [9 Metro Tech]. Is there any impact on the operations? Is there any impact on EMS CAD application being down and she not being able to address that. Then I had checked in data center if she needs to go to data center, how -- how often is she going to data center

(*Id.*). According to Ms. Deol, respondent made only three visits to the data center, located on the fourth floor of 11 Metro Tech, in the two months leading up to Ms. Deol's decision to move respondent. Ms. Deol also testified that she spoke with Deputy Chief Information Officer Charles Jackson, whom she described as "the person who's responsible for the infrastructure," and he assured her that respondent would have access to all of the same systems and resources she had at 11 Metro Tech (Tr. 328–29). After gathering the necessary information, Ms. Deol determined that the move would not have a significant impact on BTDS operations:

If system goes down, we have a protocol. We have [data center operations], which is constantly monitoring it, and Carla Murphy's there from . . . 9:00 to 5:00. After 9:00 to 5:00 Carla Murphy's not sitting in that office. System is still up and running and it's be[ing] monitored. So, the issue was not the location, during [the] pandemic we were home. . . .[F]or me, it was more of a managerial issue . . . to get a handle on her. That was more of my concern because location . . . is not an issue technically for . . . getting anything done.

(Tr. 327).

Ms. Deol testified that she informed respondent of this directive both verbally and through follow-up written communications (Tr. 330–31). On March 7, 2022, Ms. Deol met with respondent and informed her of the decision to move respondent to 9 Metro Tech (*Id.*). Following the meeting, Ms. Deol sent respondent an e-mail wherein she wrote, "Carla, as per our meeting this morning, you're moving to 6W 7, Charlie Cash and Margie will help you with this move ASAP" (Pet. Ex. 1 at 7; Tr. 330). Ms. Deol set March 29, 2022, as the deadline for the move (Tr. 332; Pet. Ex. 1 at 6).

According to Ms. Deol, respondent initially agreed to move but contested the decision (Tr. 332). Respondent testified that she objected to relocating because she believed her physical proximity to EMS CAD systems, personnel, and related resources at 11 MetroTech was necessary, and that the move to 9 Metro Tech would impede her ability to perform her job duties: "It was going to delay my ability to support some projects[,] . . . to support my staff[, and] . . . to do testing since I wouldn't have direct access to my lab. It would make it more difficult for me to handle

emergencies” (Tr. 933–34). Respondent offered specific examples of how her job would be made more difficult, citing difficulties in accessing necessary equipment only present at 11 Metro Tech (Tr. 934). She also cited an incident that took place after the move, which captured the heart of her concerns:

[W]e had an outage where I had to send runners back and forth between 9 and 11 MetroTech so that while I was in . . . 11, they would . . . pull the books from the bookshelf in there and then brought them to . . . this place [in 9 Metrotech] where I’m standing trying to work, even though I don't have a computer, I don't have a desk, I don't have a phone, you know.

(Tr. 945). Respondent further testified that she requested additional meetings to discuss the operational impacts of her relocation and expressed concern that the move would adversely affect her ability to support BTDS operations (Tr. 934–36). No meetings took place (*Id.*).

Respondent communicated her concerns in multiple e-mails to Ms. Deol and Mr. Thottam over the course of the month. On March 21, 2022, one week before Ms. Deol’s deadline for respondent to move, Ms. Ramlal-Cutler, who had been assigned as project manager for the move, sent respondent a follow-up e-mail requesting a list of respondent’s needs for the new office (Pet. Ex. 1 at 4-5). Respondent sent Ms. Ramlal-Cutler an e-mail in response, suggesting that she did not intend to provide the requested information and she would be reaching out to her union, EEO, and a labor lawyer (*Id.* at 4). Ms. Deol’s March 29 deadline came and went without respondent completing the move, despite additional prodding from Ms. Ramlal-Cutler (*Id.* at 2–3).

The second order to Move (April 2022)

On April 4, 2022, Ms. Deol sent respondent the following e-mail: “Carla, I gave you [a] directive to move on 3/29 which you did not[,] and now I am extending it to 4/8. Make sure it[']s done. You can work with union and EEO in parallel” (*Id.* at 3). Respondent replied with the following: “A fascinating approach, so if EEO and my union object to the move then you’ll move me back? Wasting weeks of my time and delaying all my projects to move me twice?” (*Id.* at 2). Three days later, respondent, Ms. Ramlal-Cutler, and other staff assigned to assist with the move volleyed e-mails back and forth regarding the relocation (Pet. Ex. 2). In one e-mail to the group that morning, respondent criticized the rationale and the execution of the move:

The last 2 times I was moved, which were both moves to get me closer [to] the resources necessary to do my job and mitigate risks to the system caused by unnecessary distance rather than this move, which is to get me farther away from

the resources necessary to do my job and create risks to the system caused by unnecessary distance it was done by facilities, [I] was unaware FDNY now has technology personnel handling moves, it is disappointing to hear.

(*Id.* at 3). Minutes later, respondent sent Ms. Deol an e-mail further criticizing the move:

I was out sick yesterday and instead of focusing on my health [I] focused on damage control of this move and barely got any rest because that is what I had to do to protect the system, my projects and my stakeholders from the negative impacts of this decision You have made it abundantly clear that arbitrary deadlines are more important than the integrity of the system, our stakeholders, and my health

(*Id.* at 2). Later that afternoon, respondent sent a lengthy e-mail detailing her concerns, copying Mr. Augier (Pet. Ex. 24). According to Ms. Deol, respondent's inclusion of Deputy Commissioner Augier violated the chain of command (Tr. 342–43).

In these e-mails, respondent disagreed with leadership and accused Ms. Deol of causing unnecessary risk to the system and caring disproportionately about deadlines. Respondent's tone occasionally veers into the unprofessional, but it does not rise to the level of misconduct. See *Arocho*, OATH 1146/18 at 27–29. Accordingly, Specifications 26, 27, 31, and 32 are dismissed.

While respondent continued to contest Ms. Deol's decision to move her to 9 Metro Tech, she also took her objections public by posting about the matter on social media. In a Facebook post about the move, respondent wrote in part, "I tried to appeal to my management on a personal level . . . it did not matter to them" (Pet. Ex. 47). Similarly, in a LinkedIn post, respondent wrote, "Location is critical in 911. . . . My agency moved me across the street with little notice and no explanation I informed them about the risks and issues, they chose to move forward without evaluating alternatives or any discussion of risk mitigation" (Pet. Exs. 47, 48).

In her closing brief, respondent contends that she did not disobey Ms. Deol's directive to move from 11 MetroTech to 9 MetroTech (Resp. Br. at 20). She characterizes her conduct as compliant, asserting that any delay resulted from reasonable efforts to obtain clarity and address operational concerns (*Id.*). I disagree with her assertion. Ms. Deol issued a clear directive that respondent relocate by March 29, 2022, and respondent did not do so. Respondent's communications with Ms. Ramlal-Cutler, particularly her statements indicating that she would not proceed with the move until certain conditions were met, reflect an intentional decision not to comply with the March 29 deadline. Moreover, respondent's April 4, 2022, e-mail to Ms. Deol,

which asserted that the move should be placed on hold pending opinions from EEO and her union, demonstrates that she did not intend to meet the April 8, 2022, deadline.

Further, respondent's reply to Ms. Deol's directive to complete the move while pursuing EEO or union intervention constituted discourtesy. *See Dep't of Social Services (Dep't of Homeless Services) v. Thomas*, OATH Index No. 298/22 at 17–18 (Jan. 6, 2022), *adopted*, Comm'r Dec. (Jan. 30, 2023), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2023-0065 (Apr. 13, 2023) (finding misconduct where respondent's e-mail to his supervisor "was sent with the intent to denigrate"). Respondent's use of the phrase "a fascinating approach" in response to Ms. Deol's order was condescending and plainly intended to undermine Ms. Deol's intelligence and authority.

Although respondent ultimately relocated prior to the April 8 deadline, this subsequent compliance does not negate her earlier refusal to obey the initial March 29 directive.

The evidence establishes that respondent violated the Department's social media policy when she publicly criticized management's decision to relocate her from 11 MetroTech to 9 MetroTech in posts on her Facebook and LinkedIn accounts. Respondent's posts asserted, among other things, that respondent "informed them about the risks and issues, they chose to move forward without evaluating alternatives or any discussion of risk mitigation," and that the Department had moved her "across the street with little notice and no explanation" (Pet. Exs. 47, 48). Respondent's statements could reasonably be expected to diminish confidence in management, disrupt agency operations, and call into question the judgment of Department leadership. The assertion that she had received "little notice and no explanation" is inconsistent with the record; Ms. Deol credibly testified that she expressly informed respondent that the move was intended to improve communication and to address ongoing concerns regarding respondent's time and leave practices (Tr. 331–32).

Taken together, respondent's posts conveyed disparaging and inaccurate characterizations of the relocation decision and of management's motives and competence. Respondent's statements therefore violated the Department's social media policy, and Specifications 29 and 30 should be sustained.

April 5, 2022, e-mail to Ms. Deol (Specification 25)

Petitioner alleges that on or about April 5, 2022, at approximately 1:25 a.m., respondent wrote an e-mail to Ms. Deol that was characterized as disruptive and prejudicial to good order (ALJ Ex. 1 at 5). At trial, petitioner submitted a copy of the e-mail which states in part:

The stress of today and having to face you deliberately making my job harder and having to drop everything to try to do damage control on that has made me sick. [I] will try to come in tomorrow if [I] am able, if not I guess I can look forward to more of your nasty comments about me taking sick leave.

(Pet. Ex. 23). The message continues:

I do not understand why you treat me like this, it is shocking and sad that any manager would treat someone who worked for them like this and just baffling that you obstruct me instead of supporting me.

(*Id.*). Respondent concluded the message with the following:

I don't want to let you drive me out of FDNY but leaving meetings to go throw up from stress and not sleeping because of stress is not tenable. Is this the vision you have for Ems [*sic*] CAD?

(*Id.*).

The manner in which respondent communicated her concerns here exceeded the bounds of acceptable workplace discourse. Rather than articulating a professional objection or seeking clarification, respondent's message directly attributed her physical illness and emotional distress to Ms. Deol's actions, accused her of deliberately making respondent's job harder, and characterized Ms. Deol's conduct as "nasty," obstructive, and shocking.

The tone and substance of the message personalized the dispute and cast Ms. Deol's supervisory actions in a pejorative and accusatory light, thereby undermining her authority. Viewed in context, the e-mail was not a measured critique of policy or management decisions, but a disparaging communication directed at a supervisor in a manner reasonably expected to disrupt the working relationship and the orderly functioning of the workplace. Accordingly, Specification 25 should be sustained.

E-mail to Vlado Frckovski on April 8, 2022 (Specification 28)

In Specification 28, petitioner alleges that on or about April 8, 2022, at approximately 8:42 a.m., respondent sent an e-mail to a fellow BTDS employee in response to a request for technical information (ALJ Ex. 1 at 6). According to petitioner, respondent's reply went well beyond a

technical response and contained statements that were inappropriate, disruptive, and disparaging toward Department leadership.

At trial, petitioner submitted a copy of the e-mail exchange between respondent and Vlado Frckovski, the EMS CAD manager at the time (Pet. Ex. 7). On April 7, 2022, Mr. Frckovski sent respondent an e-mail requesting technical information related to the EMS CAD system (*Id.*). The following day, respondent replied by e-mail, attributing her delayed response to being “very tied up with trying to protect the CAD system and my health from a project that puts my ability to support the system at risk during emergencies, delays my ability to support the system and projects on a daily basis, has no known benefits and also makes my job more physically taxing” (*Id.*). Respondent further wrote that the CAD system had experienced “more unplanned network downtime in the last year than in the prior 5 years combined” (*Id.*). She continued by stating that she had “failed to protect the system or [her] health” and that all she could do was “document the risks so when this gets investigated I’ll have documentation showing I tried to protect the system” (*Id.*).

Respondent speculated about her supervisor’s actions, writing, “I’m sure Kamal [Deol] has been doing something similar so no one above her can say she didn’t try to warn them about the risks when this goes wrong” (*Id.*). Ms. Deol was copied on the e-mail (*Id.*).

While addressing the technical request, respondent stated that she had information she could provide Mr. Frckovski, but she expected to be delayed in returning to the office because of planned medical appointments as a result of “FDNY coming up with a new way to try to kill me on the job” (*Id.*).

Although respondent’s statements were framed as concerns about system integrity and public safety, the tone and content of respondent’s e-mail reply to Mr. Frckovski went beyond professional disagreement. The speculation regarding supervisory intent, the suggestion of impending failure and investigation, and the assertion that the Department was “coming up with a new way to try to kill me on the job” introduced inflammatory language into a workplace communication. These remarks were unnecessary to address the technical request and were reasonably expected to disrupt the supervisory relationship.

Under these circumstances, I find that respondent's April 8, 2022, e-mail reflects conduct that was inappropriate and reasonably expected to be disruptive of the workplace. Accordingly, Specification 28 should be sustained.

Lunch hour requirement (Specification 34)

Specification 34 alleges misconduct arising from respondent's e-mails following a directive issued by Ms. Deol concerning compliance with the FDNY Time and Leave Policy (ALJ Ex. 1 at 8). According to petitioner, on or about and between May 16 and 17, 2022, respondent was instructed to comply with the Department's requirement that lunch periods must begin no earlier than 11:30 a.m. and conclude no later than 2:30 p.m. (*Id.*). Petitioner alleges that, in response to this instruction, respondent sent an e-mail to Department employees stating an intention not to comply with the directive (*Id.*). Petitioner asserts that respondent's distribution of this message to BTDS employees, and her stated intention to continue prior practices notwithstanding the instruction she had received, constituted misconduct (*Id.*).

Ms. Deol testified that respondent's lunch practices had been discussed during both supervisory conferences held in January 2022 (Tr. 380-82). According to Ms. Deol, at the first conference on January 5, 2022, respondent was instructed to comply with the FDNY Time and Leave Manual and was informed that lunch breaks were required to be taken between 11:30 a.m. and 2:00 p.m. for a duration of one hour (Tr. 380). Ms. Deol testified that respondent was provided with access to the Time and Leave Manual at that time via an e-mail containing a hyperlink to the policy (*Id.*).

At trial, petitioner submitted a copy of the e-mail exchange at issue (Pet. Ex. 27). The correspondence included Ms. Deol, respondent, Margie Dominguez, the Deputy Director of Personnel Services during this period, and Mr. Thottam, and covered the period from May 16 through May 17, 2022 (*Id.*). The document shows that the e-mail exchange began with a message from respondent to Ms. Deol on March 16, 2022, at 5:37 p.m., informing Ms. Deol that she was unable to take lunch as a result of a meeting running over time, and she would then be leaving early from work to make up "for the difference" (Pet. Ex. 27 at 4). Ms. Deol responded the following day and advised respondent to organize her calendar "to find a break between 11:30-2" (*Id.*). Mr. Thottam and Ms. Dominguez were copied on Ms. Deol's reply (*Id.*). Ms. Deol requested that Ms. Dominguez assist respondent with Ms. Deol's directive (*Id.*). Ms. Deol explained that she

sent this e-mail because respondent was not following the lunch-time policy (Tr. 380–81). Ms. Deol testified that if respondent knew her calendar included meetings during that window, she should plan to take lunch earlier, or, if she could not take lunch during the prescribed period, she should inform Ms. Deol in advance so they could plan accordingly (Tr. 381).

Respondent sent the following reply to Ms. Deol, copying Ms. Dominguez and Mr. Thottam: “Thank you for communicating that you require that I take lunch before 2:30 unless I’m able to inform you in advance of that fact” (*Id.* at 3–4). Respondent concluded her message with the following:

Ms. Dominguez, please guide me on how to communicate to people that I am required to take lunch during certain hours so if they have a technical problem or a meeting they need me to attend that it must wait an hour so I can take lunch?
(*Id.* at 3).

Ms. Deol testified that if respondent was unable to take lunch between 11:30 a.m. and 2:30 p.m. due to work responsibilities, respondent was permitted to take lunch after 2:30 p.m., provided she informed Ms. Deol in advance, or alternatively to claim the time as compensatory time or overtime and take lunch later. According to Ms. Deol, she had informed respondent of this policy prior to May 17, 2022, and it had been discussed during the supervisory meetings in January 2022 (Tr. 381–83).

Ms. Dominguez replied to respondent’s e-mail with the following language taken from the Department’s Time and Leave Policy: “Lunch hours must commence no earlier than 11:30am and be completed no later than 2:30pm” (*Id.*). She also included a hyperlink to the time and leave manual (*Id.*). Respondent replied to Ms. Dominguez’s e-mail 45 minutes later with the message for which petitioner brings this charge (*Id.*). In her reply, respondent stated:

Kamal has informed me that I am no longer permitted to take lunch outside those hours as I have been for the past 20+ years, including during many months of reporting to her. I have asked for her direction on how she'd like me to handle situations where I cannot ask for her permission in advance to work through lunch to support something time critical as well as her direction on how she'd like me to handle her new instruction that I must always ask for permission to work outside my normal work hours. Until I receive clear explicit direction from [Ms. Deol] clarifying her new instructions on how to handle emergencies I will continue to handle them as I have in the past following her prior instructions

(*Id.* at 2). The e-mail exchange concludes with Ms. Deol ordering respondent to seek permission before taking lunch beyond the hours permitted or seeking compensatory time in exchange for foregoing her lunch hour (*Id.*).

Respondent's messages do not constitute misconduct. The evidence does not establish that respondent intended to disobey Ms. Deol's directive. While the tone of respondent's e-mails reflects frustration and may at times have been unnecessarily sharp, they do not rise to the level of insubordination or disrespect prohibited by Department standards.

Based on Ms. Deol's testimony, the time and leave policy, and the e-mails in evidence, Ms. Deol's directive required respondent to take lunch between 11:30 a.m. and 2:30 p.m., notify Ms. Deol in advance when that was not feasible, or properly account for the time through compensatory procedures. Although Ms. Deol testified that this requirement had been discussed during the January supervisory meetings, respondent's May 17, 2022, e-mails reflect some uncertainty about how the directive applied in emergency situations.

Respondent's statements that she would continue handling emergencies according to prior instructions appear directed toward understanding how to reconcile operational demands with the directive rather than expressing an intent to disregard supervisory authority. The record therefore does not establish a refusal to comply with the directive.

Although respondent's e-mails reflect frustration, the record supports a finding that she was attempting to obtain clarification rather than challenge Ms. Deol's authority. *See Felix*, OATH 1206/09 at 4 (finding e-mails that reflected frustration and a "slight edge" in tone were not rude or insubordinate where respondent was attempting to clarify confusing directives and remained within acceptable workplace bounds).

Petitioner did not establish that respondent refused to comply with the directive or otherwise engaged in misconduct. Accordingly, Specification 34 should be dismissed.

Task List (Specification 35)

Specification 35 alleges that on July 6, 2022, between approximately 8:40 a.m. and 11:43 a.m., respondent failed to comply with a supervisory directive issued by Ms. Deol (ALJ Ex. 1 at 9). According to petitioner, during that time period Ms. Deol sent respondent several e-mails requesting that respondent provide her with a copy of a task list reflecting respondent's work and assignments, and respondent refused to comply with this request and responded by e-mail in a

manner that challenged the directive (*Id.*). Petitioner contends that respondent's refusal to provide the requested task list, coupled with her stated rationale for declining to do so, constituted a failure to follow a direct supervisory instruction and amounted to insubordination and misconduct (*Id.*).

In support of the charge, petitioner directed this tribunal's attention to a portion in Ms. Deol's e-mail to respondent sent at 9:51 a.m. on May 17, 2022 (Pet. Ex. 27 at 4). Although the e-mail is mainly about respondent's lunch practice, it ends with a directive from Ms. Deol for respondent to send Ms. Deol her daily tasks, including the time spent on each task (Tr. 391–92; Pet. Ex. 27 at 4).

According to Ms. Deol, the daily task list was something provided by all managers and directors in the Department (Tr. 395). It began as a way to keep track of the work being done during the pandemic when most Department employees were working remotely (*Id.*). Ms. Deol further testified that since the daily task list included the number of hours spent working on a task, and the time required to complete programming tasks is generally established, a properly supplied task list would inform her if an employee is in need of assistance with certain tasks (*Id.*). She testified that the task list was not meant to "go after [employees]. It is more to make sure our projects are delivered on time, especially when we are short-staffed. And if somebody is struggling, we can have other staff members help them out. That's the whole goal of it" (*Id.*).

According to Ms. Deol, as of July 6, 2022, no one on the EMS CAD team had complied with her request for a list of daily tasks (Tr. 395–96). Ms. Deol issued the directive regarding daily task lists on May 17, 2022 (*Id.*). According to respondent's timesheets, she worked 21 days between May 17 and July 6, 2022, and two of those workdays consisted of only one hour of work (Pet. Ex. 39).

Respondent testified that prior to Ms. Deol's request for daily tasks, the EMS CAD team had regularly provided monthly status reports (Tr. 978). In response to Ms. Deol's assertion that respondent hadn't provided daily tasks, respondent submitted 18 e-mails containing her tasks for the day that she sent to Ms. Deol between May 17 and July 6, 2022 (Resp. Ex. L1–L18). This evidence proved that respondent e-mailed daily task lists to Ms. Deol for 16 of 19 of her regular workdays during this period (Resp. Ex. L1–L18; Pet. Ex. 39). On one of the three days for which respondent failed to e-mail a daily task list, respondent instead e-mailed Ms. Deol, advising that

she had experienced a death in her family (Tr. 973; Resp. Ex. L13; Pet. Ex. 39). Respondent testified that she complied with Ms. Deol's directive to submit lists of her tasks daily, stating:

Whenever she asked me to do something, as soon as I understood what she wanted, I would try and get it done. Sometimes I needed some clarification. Like in this particular case, I had asked her to give me an example that somebody else had sent that was acceptable to her, and I followed that example, so.

(Tr. 984).

The evidence here shows that respondent substantially complied with Ms. Deol's directive during the period from May 17 through July 6, 2022. Respondent did not achieve perfect compliance, but the record shows that she only failed to comply on three of 19 occasions, and one of those was missed due to a death in her family.

Accordingly, this Specification should be dismissed.

Request to work from home (Specification 36)

In Specification 36, petitioner alleges that on or about July 6, 2022, at approximately 1:18 p.m., respondent sent an e-mail to Ms. Deol complaining about not being allowed to work from home and accusing Ms. Deol of having no concern for FDNY employees and prioritizing creating a "toxic work environment" for respondent over the efficient performance of Departmental duties (ALJ Ex. 1 at 9).

In support of the allegation, petitioner submitted a copy of the e-mail that is the source of the charge (Pet. Ex. 31). In the e-mail, respondent expressed concerns about her work status, leave requests, and broader concerns about her treatment by management (*Id.*). Respondent stated that she had requested permission to work from home that morning because she was ill but had not received a response from Ms. Deol (*Id.*). She further asserted that her Family and Medical Leave Act request and reasonable accommodation appeal remained unanswered, that Ms. Deol had denied previous leave requests, and that she had exhausted her available sick leave (*Id.*). Respondent wrote that, as a result, her work was "piling up unnecessarily" while she was sick (*Id.*).

Respondent contrasted Ms. Deol's actions denying her leave requests and remaining silent on respondent's request to work from home with what she described as the conduct of other managers, stating that other supervisors had shown her compassion and accommodated her medical needs (*Id.*). She asserted that Ms. Deol's approach reflected a lack of concern for her

health, writing that her “heart and [her] lungs” were treated as insignificant except insofar as they were inconvenient to Ms. Deol (*Id.*). Respondent questioned whether any benefit existed to the Department or its stakeholders by preventing her from working remotely while ill and suggested that even managers who lacked personal concern for staff would ordinarily act to support operational needs (*Id.*).

The e-mail further alleged that Ms. Deol had created a “toxic” work environment and accused Ms. Deol of intentionally making respondent’s job more difficult (*Id.*). Respondent wrote that she and her team had played a critical role in enabling the Department to meet project deadlines while others in the Department had failed in their responsibilities (*Id.*). She questioned whether management’s actions were intended to force her resignation and asserted that Ms. Deol had repeatedly ignored her requests for assistance (*Id.*).

Respondent also accused Ms. Deol of deliberately excluding her from the EMS CAD upgrade project, stating that she was the most qualified individual to manage that effort and that her exclusion harmed both the project and the Department (*Id.*). Throughout the message, respondent questioned Ms. Deol’s motives, expressed confusion about what respondent described as “malice” directed toward her, and characterized management’s conduct as “baffling” and unjustified (*Id.*).

At trial, Ms. Deol testified that she was confused by respondent’s characterization of her actions in the July 6 e-mail (Tr. 403). She stated that she was deeply affected by respondent’s message, and that upon reading the message, she became visibly emotional (Tr. 404). On the witness stand, she became visibly affected while discussing the e-mail. Ms. Deol explained that she perceived the e-mail as accusing her of acting in ways that endangered public safety and caused harm, characterizations she unequivocally rejected (*Id.*). She testified that she had worked diligently for the Department and found it unfair and distressing to be portrayed as indifferent to public safety or to respondent’s health (*Id.*).

According to Ms. Deol, her only request of respondent that day was that respondent provide a task list so that Ms. Deol could assess workload and determine whether respondent could work from home while ill (*Id.*). Ms. Deol testified that she had not engaged in any conduct intended to provoke or mistreat respondent and that she did not understand why such a routine managerial request prompted the accusatory tone reflected in the e-mail (Tr. 403–04).

Ms. Deol further testified that respondent's message went beyond a workplace disagreement and felt like a personal attack, particularly because it attributed malice to her decisions as a supervisor (*Id.*). She stated that being repeatedly characterized in this manner was emotionally burdensome and affected her ability to perform in her role as supervisor (*Id.*).

The July 6, 2022, e-mail sent by respondent to Ms. Deol exceeded the bounds of acceptable workplace disagreement and supports a finding of misconduct. While employees are permitted to disagree with supervisory decisions and to express frustration, even strongly, such communications must remain within the range of acceptable workplace behavior. *See Freeman*, OATH 1399/06 at 9. Here, respondent's July 6 e-mail went beyond the expression of disagreement with management's handling of her work-from-home request or her concerns regarding workload and health. Rather than confining her communication to those issues, respondent repeatedly attributed improper motives to Ms. Deol, accusing her of indifference to respondent's health, intentionally creating a "toxic" work environment, and prioritizing personal hostility towards respondent over the interests of the Department and its stakeholders. The e-mail framed routine supervisory actions as malicious and portrayed Ms. Deol's conduct as deliberately harmful.

The tone and substance of the e-mail were demeaning, accusatory, undermined Ms. Deol's authority, and questioned her integrity. *See Dep't of Correction v. Smith*, OATH Index No. 667/13 at 41-42 (July 19, 2013), *aff'd*, NYC Civ. Serv. Comm'n Case No. 35546 (May 6, 2014) (a statement is disrespectful if it is intended to demean or belittle a supervisor or to disparage her integrity, credibility, or authority). Under these circumstances, petitioner has met its burden of establishing that respondent's July 6, 2022, communication crossed the line from disagreement into discourteous and disruptive conduct. Accordingly, Specification 36 should be sustained.

Adding Ms. Deol to the EMS CAD e-mail group (Specifications 37, 38)

Specifications 37 and 38 arise from a series of e-mail messages sent by respondent to Ms. Deol on July 18, 2022, in response to a directive concerning Ms. Deol's inclusion in the EMS CAD e-mail distribution group (ALJ Ex. 1 at 9). Petitioner contends that, taken together, these communications demonstrate respondent's refusal to accept supervisory direction without commentary, her disparagement of her supervisor's competence and motives, her dissemination

of those views to other staff members in a manner that was disruptive and undermining of supervisory authority, and her general discourteous conduct during this period.

In support of the allegations, petitioner submitted a copy of the July 18, 2022, e-mail exchange between Ms. Deol and respondent. The documents show that on July 18, 2022, at approximately 10:17 a.m., Ms. Deol sent respondent a request to add Ms. Deol and Mr. Frckovski to the EMS CAD e-mail group (Pet. Ex. 32 at 2). Respondent replied to Ms. Deol's message questioning the request to add Mr. Frckovski (*Id.*). Ms. Deol reasserted her request, to which respondent replied, in part, "Hi Kamal, I will obey as you demand. As I have said before, communicating your objectives with your staff gives us the ability to support your objectives, demanding blind obedience like we're children eliminates any ability for us to proactively support your objectives" (*Id.*). Respondent further wrote that she would inform her team that Ms. Deol would begin receiving notifications directed to the EMS CAD group, adding that Ms. Deol would not be acting on those notifications because, according to respondent, neither Ms. Deol nor Mr. Frckovski "have the knowledge or training to do so" (*Id.*).

Four minutes after sending her reply to Ms. Deol, respondent sent an e-mail to Renee Choi, a fellow BTDS employee, relaying Ms. Deol's directive (Pet. Ex. 6). Ms. Deol and Mr. Frckovski were copied on the message (*Id.*). In her message to Ms. Choi, respondent stated in part, "[Ms. Deol] would not share with me what purpose this serves since neither of them has the knowledge or training to act on anything sent to our team" (*Id.*). Respondent ended the message to Ms. Choi alleging that the directive was intended to "further undermine our ability to be proactive" due to Ms. Deol's "lack of trust" in respondent and her team (*Id.*).

The manner in which respondent chose to communicate with Ms. Deol and with Ms. Choi on July 18, 2022, crossed the bounds of acceptable workplace discourse. Respondent complied with Ms. Deol's directive only while simultaneously characterizing it as an exercise in "blind obedience," questioning her supervisor's competence, and attributing improper motives to the instruction. These statements were not necessary to carry out the directive and served no operational purpose. Instead, they undermined Ms. Deol's authority and fostered distrust among staff regarding management's role and competence. Similarly, respondent's e-mail to Ms. Choi insulted Ms. Deol's competence and integrity. Accordingly, Specifications 37 and 38 should be sustained.

Discourteous e-mail to Ms. Ramlal-Cutler regarding ET3 project in June 2022 (Specification 47)

Specification 47 stems from e-mail exchanges between respondent and Ms. Ramlal-Cutler in June and July 2022, the same period as Specifications 37 and 38. Petitioner contends that respondent's e-mails are demonstrative of her general discourteous behavior during the period (ALJ Ex. 1 at 10–11).

According to the copy of the e-mail exchanges between respondent and Ms. Ramlal-Cutler, on June 9, 2022, respondent e-mailed Ms. Ramlal-Cutler and another Department employee, requesting data required for what was known internally as "ET3," a program that permitted public safety agencies to bill for emergency medical treatment without transporting a patient to a hospital (Pet. Ex. 4; Tr. 59–60, 1017). The last of three spokes of the program was the alternate destination project¹ for which Ms. Ramlal-Cutler served as the project manager (Tr. 59-60). Four days later, respondent sent a follow-up e-mail requesting an update on the request for data, copying 21 other Department employees that Ms. Ramlal-Cutler identified as stakeholders during her testimony (Pet. Ex. 4 at 7). Ms. Ramlal-Cutler replied, advising respondent that she and her colleague were still working through the material and would provide an update when they had completed their review (*Id.*). Respondent replied, urging Ms. Ramlal-Cutler to provide an estimated date for when the results might be expected (*Id.* at 6–7). Respondent also indicated that she would "keep asking until I get an estimate date since this is past due," and also noted the following: "The deadline was unreasonable and the only way it had any chance of being met was if everyone did everything to keep their items on track, and that has not happened, the data is delayed, the mobile pilot is delayed so the project live date will be delayed" (*Id.* at 7).

Subsequent e-mails involved a smaller audience. Over the course of threeweeks, Ms. Ramlal-Cutler sent e-mails providing updates to respondent and a small number of "stakeholders." None of her updates contained the entirety of the requested data (*Id.* at 4–6). Following a meeting with Ms. Deol and the EMS CAD team on July 5, respondent e-mailed Ms. Ramlal-Cutler inquiring into the status of a separate, but related, request she made to Ms. Ramlal-Cutler (*Id.* at 2–3). Finding Ms. Ramlal-Cutler's response dissatisfactory, respondent replied with the following:

It seems you are unable to get me the information I asked for weeks ago. I thought it would be a simple question you as the [project manager] could ask your

¹ The alternate destination refers to locations serving as alternatives to hospitals (Tr. 1018–19).

stakeholders . . . I put together a very simple path forward for you I haven[’t] received a response on this in weeks from you and it isn’t actually anything the users care about so I will take care of it so I can go back to focusing on things that are actually priorities for this project, and for EMSCAD stakeholders

(Pet. Ex. 4 at 1). Respondent’s e-mail also included Ms. Deol and one other colleague , noting that “stakeholders” had been removed from the distribution list. Ms. Ramlal-Cutler replied, asserting that respondent’s e-mail was “insulting and an attack on my skillset” (*Id.*).

Respondent’s June 13, 2022, e-mail to Ms. Ramlal-Cutler, which included the 21 stakeholders, was meant to cause pressure, but it did not rise to the level of discourteous conduct, as respondent even conceded that the “deadline was unreasonable” and the delay was the fault of many others. However, the manner in which respondent chose to communicate with Ms. Ramlal-Cutler on July 5, 2022, crossed the bounds of acceptable workplace discourse and constituted a virtual shaming that contained insults to her competence and integrity. Accordingly, Specification 47 should be sustained.

Inappropriate e-mails in November–December 2022 (Specifications 48, 50, and 51)

Specifications 48, 50, and 51 concern a series of e-mails sent by respondent in November and December 2022 (ALJ Ex. 1 at 11–12). Petitioner alleges that these communications, which occurred toward the end of the charged period and after prior supervisory conferences and disciplinary actions, reflect continued misconduct in the form of inappropriate tone, failure to follow supervisory instructions, violations of chain of command, and the use of discourteous or accusatory language in written correspondence (*Id.*).

Specification 48 alleges that on or about November 3, 2022, respondent sent an e-mail to Mr. Thottam, Ms. Deol, and Mr. Augier, in which she questioned management decisions affecting her role, her team, and the EMS CAD system (*Id.* at 11). According to petitioner, respondent criticized changes made by Department leadership, asserted that those changes made her work environment “hostile” and her job “harder,” and suggested that management had deliberately excluded her expertise from decisions impacting public and first responder safety (*Id.*). Petitioner further alleges that respondent bypassed her immediate chain of command by including senior leadership in this communication and that the content of the e-mail improperly challenged management’s judgment and motives (*Id.*).

Specification 50 alleges that on or about December 11, 2022, respondent sent an e-mail to Ms. Deol, copying additional Department employees, concerning a CityTime entry (*Id.* at 12). According to petitioner, respondent stated that she did not want to be “falsely accused by Kamal of falsifying [her] timesheets again” (*Id.*). Petitioner contends that this communication was discourteous and accusatory in tone (*Id.*).

Specification 51 alleges that on or about December 5, 2022, respondent disregarded a direct supervisory instruction related to communications about the Peraton-EMS CAD contract (*Id.*). According to petitioner, Ms. Deol instructed respondent not to send e-mails to external parties and to discuss contract-related questions internally with management (*Id.*). Petitioner alleges that respondent nevertheless sent an e-mail to multiple Department officials and contract personnel asserting her role as the Peraton contract lead and raising concerns about her exclusion from contract-related communications (*Id.*). Petitioner further alleges that after receiving a response, respondent again communicated directly with the FDNY Chief Contracting Officer, notwithstanding the prior instruction (*Id.*).

Petitioner contends that, taken together, the communications alleged in Specifications 48, 50, and 51 demonstrate respondent’s continued use of written correspondence to challenge supervisory authority, expand the audience for internal disputes, and, in at least one instance, failure to comply with a clear supervisory directive during the latter part of 2022.

In support of the allegations that make up Specification 48, petitioner submitted a copy of an e-mail that respondent sent to Mr. Thottam, Ms. Deol, Mr. Augier, and Mr. Jackson on November 3, 2022 (Pet. Ex. 34). In the message, respondent reiterated many of the concerns she had articulated between the end of 2021 through 2022 (*Id.*). She began the message stating, “I do not understand why all the changes were made in the last few months to make my team inefficient, our work environment hostile and our jobs harder” (*Id.* at 1). Throughout the remainder of the first paragraph, respondent reiterated previous concerns about BTDS involvement in the EMS CAD upgrade (*Id.*). The following paragraph contains 11 bullet-point items that outlined what respondent characterized as “a number of problems over the past few months that were exacerbated by” managerial decisions (*Id.* at 2). Many of the items are technical, related to changes in policy related to troubleshooting and managing system failure (*Id.*; Tr. 412–14). In one bullet point she cited her move to 11 MetroTech as having “increased downtime on

several problems and CAD failures” while also decreasing her productivity (Pet. Ex. 34 at 2). In another, she cited “[t]aking away my car without making plans for what I’m supposed to do when I need to get to Metrotech when there is a problem” which “increased downtime during a failure” (*Id.*). Respondent expressed a willingness to work on mitigating the effects she outlined with the e-mail recipients and ended the e-mail by requesting that if the e-mail was going to be used to generate charges against her, that they be included in disciplinary charges already filed (*Id.*).

Petitioner submitted a copy of an e-mail respondent sent on December 1, 2022, at 10:37 a.m. to timekeeping staff in support of Specification 50 (Pet. Ex. 36). Ms. Deol was copied on the e-mail (*Id.*). Respondent wrote, “Hi, I came in at 10:02 on 11/22. Citytime will not let me take leave from 10:00am to 10:02am. Please let me know how to handle. I consulted the time and leave manual and it isn’t covered. I do not want to be falsely accused by Kamal [Deol] of falsifying my timesheets again” (*Id.*).

A copy of e-mail correspondence related to Peraton that took place on December 5, 2022, was submitted in support of Specification 51 (Pet. Exs. 37, 38). In an e-mail sent from Ms. Deol to respondent and other BTDS staff that had a subject line, “Peraton change order” at 9:47 a.m., Ms. Deol instructed respondent not to send e-mails “to Barry or anyone else, discuss the answers with us only” (Pet. Ex. 37). Barry Greenspan, the Barry in question, was an Assistant Commissioner within the FDNY’s fiscal department at the time (Tr. 102–03).

At 11:15 a.m., respondent sent an e-mail to Tetyana Syorduk, an analyst on Mr. Greenspan’s team, with the subject heading, “FDNY Peraton contract expires in 3 days” (Pet. Ex. 38). Mr. Greenspan was also copied on the e-mail (*Id.*). According to Ms. Deol, respondent’s e-mail was in violation of the directive she issued earlier in the day (Tr. 426).

Respondent testified that she is “responsible for the Peraton contract with the Department (Tr. 1146). She explained, “I wrote most of it and participated in all of the negotiations on it. I handled renewals, I handled task orders and change orders on it” (*Id.*). She explained further that her work on the contract was in regard to “everything to do with the contract for both the Fire message switch and the EMS CAD system and any products that the Fire Department depends on” (*Id.*). According to respondent, she “was instructed not to communicate with Peraton on some questions that OMB had asked about the CAD upgrade project” (*Id.*) And she “did not communicate with Peraton about those” (*Id.*). Adding more context, respondent testified that she

had been working with the vendor prior to Ms. Deol's instruction, and the contract is something for which she continued to be responsible (*Id.*).

Regarding Specification 48, respondent's e-mail went beyond the expression of professional disagreement. The message was disseminated to senior leadership outside respondent's immediate supervisory chain and framed management's actions as not merely mistaken, but as affirmatively harmful to public safety and operational integrity. Respondent's repeated assertions that leadership decisions exacerbated system failures, increased downtime, and compromised emergency response, served to challenge management's judgment and motives in a manner that was accusatory and undermining.

Although portions of the e-mail addressed technical and operational issues, the overall tone and breadth of the communication reflect a pattern, already documented earlier in this case, of escalating internal disputes to broader audiences and attributing adverse motives to supervisors. Under these circumstances, petitioner established that respondent's November 3, 2022, e-mail constituted discourteous conduct and an improper challenge to supervisory authority. Accordingly, Specification 48 should be sustained.

Regarding Specification 50, respondent's inclusion of an allegation of false accusation introduced a personal, accusatory element directed at her supervisor. The statement was not framed as a neutral request for clarification or guidance; it was an accusation against Ms. Deol. Additionally, the inclusion of timekeeping staff in the e-mail was also unnecessary. Even accepting respondent's frustration with prior time-and-leave disputes, the manner in which she expressed that frustration in this e-mail was discourteous. Accordingly, Specification 50 should be sustained.

Finally, regarding Specification 51, the documentary evidence establishes that the directive at issue arose in the context of a specific change-order inquiry related to the Peraton contract extension. Ms. Deol's instruction was issued in response to questions raised by Mr. Greenspan regarding questions from the City's Office of Management and Budget ("OMB") regarding the change order and the contract extension. Later that morning, respondent sent an e-mail to Ms. Sydoruk and Mr. Greenspan, copying senior FDNY officials, in which she asserted her longstanding role as the Peraton contract lead and replied to Mr. Greenspan regarding the questions posed by OMB.

Contrary to respondent's suggestion, the distinction between a "change order" and a

“contract extension” does not remove her communications from the scope of the directive. The record demonstrates that the change-order inquiry was part of the broader contract-extension process and was being addressed in real time with Department procurement leadership and OMB. Under these circumstances, respondent’s unilateral decision to communicate directly with external contract personnel directly was a violation of Ms. Deol’s instruction.

Petitioner established by a preponderance of the evidence that respondent failed to comply with a clear supervisory directive. Specification 51 should be sustained.

Findings and Conclusions

Time and Leave Violations (Specifications 1–14, 16–18, 39–46, 49)

1. Petitioner proved that respondent recorded CityTime start times that did not correspond with her documented arrival time at her workplace on multiple dates between March and August 2022. Specifications 1 through 14 should be sustained.
2. Petitioner did not prove that respondent violated Department policy regarding leave requests arising from her December 2021 communications. Specifications 16, 17, and 18 should be dismissed.
3. Petitioner did not prove that respondent misused sick leave on the charged dates between March and July 2022. Specifications 39 through 45 should be dismissed.
4. Petitioner proved that respondent failed to provide sufficient notice that she would be late to work on May 19, 2022, and November 17, 2022. Specifications 46 and 49 should be sustained.

Discourtesy and Insubordination (Specifications 15, 19–38, 47–51)

5. Petitioner did not prove that respondent made false statements in her December 7, 2021, e-mail concerning the EMS CAD manager job posting. Accordingly, Specification 15 should be dismissed.

6. Petitioner did not prove that respondent's January 2022 communications constituted misconduct as alleged in Specification 19. Specification 19 should be dismissed.
7. Petitioner proved that respondent engaged in misconduct through certain communications concerning EMS CAD project decisions as alleged in Specifications 20, 23, and 33. Specifications 20, 23, and 33 should be sustained.
8. Petitioner proved that respondent's communications concerning personnel decisions constituted misconduct. Specifications 21 and 22 should be sustained.
9. Petitioner did not prove that respondent's conduct relating to the relocation directive constituted insubordination as alleged in Specifications 24, 26, 27, 31, and 32. Accordingly, those Specifications should be dismissed.
10. Petitioner proved that respondent's April 5, 2022, e-mail to Ms. Deol constituted misconduct. Specification 25 should be sustained.
11. Petitioner proved that respondent's April 8, 2022, e-mail constituted misconduct. Specification 28 should be sustained.
12. Petitioner proved that respondent engaged in misconduct through public communications relating to the relocation dispute as alleged in Specifications 29 and 30. Specifications 29 and 30 should be sustained.
13. Petitioner did not prove that respondent engaged in misconduct relating to compliance with the Department's lunch hour requirement. Specification 34 should be dismissed.
14. Petitioner did not prove that respondent failed to comply with a supervisory directive to provide daily task lists as required. Specification 35 should be dismissed.
15. Petitioner proved that respondent's request to work from home constituted misconduct. Specification 36 should be sustained.

16. Petitioner proved that respondent failed to comply with supervisory directives relating to inclusion of Ms. Deol in EMS CAD communications. Specifications 37 and 38 should be sustained.
17. Petitioner proved that respondent sent a discourteous communication concerning the ET3 project. Specification 47 should be sustained.
18. Petitioner proved that respondent engaged in misconduct relating to workplace communications during November and December 2022 as set forth in the decision. Specifications 48, 50, and 51 should be sustained.

Recommendation

Upon making these findings, I requested a copy of respondent's personnel record in order to arrive at a penalty recommendation. In response to my request, petitioner submitted a record of respondent's pay increases, suggesting that this is the first instance of disciplinary action in respondent's more than 30 years of service with the Department. For the misconduct charged here, the Department seeks the penalty of termination. I do not believe that termination would be appropriate here.

The purpose of a disciplinary penalty is not to punish the employee but to correct improper behavior and protect the integrity of the agency and the public service.

This tribunal typically recommends penalties in accordance with the principle of progressive discipline. *See Dep't of Transportation v. Jackson*, OATH Index No. 299/90 at 12 (Feb. 6, 1990) ("It is a well-established principle in employment law that employees should have the benefit of progressive discipline wherever appropriate, to ensure that they have the opportunity to be apprised of the seriousness with which their employer views their misconduct and to give them a chance to correct it."); *see, e.g., Health & Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. Ford*, OATH Index No. 2383/09 at 11–12 (July 10, 2009) (termination recommended for time and leave violations where respondent had served multiple suspensions for similar misconduct). Termination is generally reserved for misconduct demonstrating fraud, threats to health or safety, refusal to perform duties, or conduct demonstrating that the employee cannot be relied upon to meet the fundamental obligations of public service. *See Dep't of Social Services*

(Human Resources Admin.) v. Lawrence, OATH Index No. 940/25 at 11 (Sept. 3, 2025), *adopted*, Comm’r Dec. (Sept. 16, 2025) (employee terminated for engaging in a scheme to defraud the Small Business Administration); *Health & Hospitals Corp. (Harlem Hospital Ctr.) v. Manning*, OATH Index No. 1480/10 at 19–21 (May 26, 2010) (termination recommended for falsification of official records and abandonment of duties); *Dep’t of Educ. v. Matos*, OATH Index No. 214/04 at 19 (Feb. 13, 2004), *modified on penalty*, Chancellor’s Dec. (Apr. 2, 2004), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 05-17-SA (Apr. 15, 2005) (employee terminated for repeated time sheet falsification despite length of service). Similarly, termination may be warranted where misconduct threatens operational safety or demonstrates conduct incompatible with continued public employment. See *Dep’t of Correction v. Thomas*, OATH Index No. 2212/22 at 41–43 (Aug. 8, 2022), *adopted*, Comm’r Dec. (Sept. 29, 2022), *aff’d*, NYC Civ. Serv. Comm’n Case No. 2022-0682 (Jan. 17, 2023) (employee terminated after using excessive force, falsifying timekeeping records, and submitting a false use of force report, conduct that was considered “inimical to his obligations” that gave the Department “reason to doubt his integrity”).

Termination, however, is not always appropriate even when the misconduct on its face appears to warrant it. The appropriate penalty must be determined based upon the totality of the sustained misconduct rather than any single specification, together with consideration of respondent’s disciplinary history, length of service, likelihood of recurrence, and potential for rehabilitation. *Health & Hospitals Corp. (Kings County Hospital Ctr.) v. Meyers*, OATH Index No. 1487/09 at 8 (Jan. 26, 2009), *aff’d*, NYC HHC Pers. Rev. Bd. Dec. No. 1349 (July 31, 2009) (finding termination of employment for a ten-year employee without any prior discipline for a minor altercation with a coworker would be “disproportionately severe to the proven misconduct” and would “violate[] the concept of progressive discipline”).

The central inquiry in cases like this is “whether a penalty short of termination will change the employee’s behavior.” *Dep’t of Correction v. Ward*, OATH Index No. 2137/18 at 8 (June 21, 2019) (quoting *Dep’t of Housing Preservation & Development v. Ray*, OATH Index Nos. 1460/00 & 2135/00 at 31 (Sept. 14, 2000), *adopted*, Comm’r Dec. (Oct. 27, 2000), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 01-84-SA (Dec. 28, 2001)). Where the record demonstrates that the employee remains capable of rehabilitation, and the misconduct does not establish an irreparable breakdown of the employment relationship, substantial suspensions have been found sufficient to

protect the agency's interests while reinforcing workplace standards. *See Dep't of Housing Preservation and Development v. Saliba*, OATH Index No. 1347/14 at 15–16 (May 19, 2014) (20-day suspension imposed despite significant misconduct); *Dep't of Environmental Protection v. Trotman*, OATH Index No. 337/14 at 17–18 (Jan. 16, 2014) (penalty short of termination imposed where misconduct did not demonstrate unfitness for continued service); *Cf. Fire Dep't v. Buttaro*, OATH Index No. 2430/14 at 33–34 (Jan. 13, 2015) (termination of employment recommended where veteran firefighter repeatedly disobeyed orders to wear Department-issued clothing, engaged in conduct designed to create a hostile work environment, and lack of remorse or appreciation for his misconduct further suggested that he was unlikely or unwilling to change his behavior).

Similarly, where time and leave violations or related misconduct reflect poor judgment or correctable deficiencies rather than calculated fraud, penalties short of termination may be appropriate. *See Financial Information Services Agency v. Leung*, OATH Index No. 2115/13 at 41–43 (Apr. 9, 2014), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2014-0510 (Jan. 20, 2015) (demotion imposed where time and leave violations did not establish theft of time or unfitness for continued service).

Applying these principles, I next consider the appropriate penalty in light of the sustained specifications, the nature and seriousness of the misconduct proven, and the mitigating and aggravating factors present in this record.

The first factor I found in respondent's favor was her extraordinary career in service to the City and its residents. Respondent's work history with the Department spans more than three decades and reflects a long record of public service in increasingly responsible technical and operational roles. Respondent began her career with the Department in the 1990s and over time developed specialized expertise in emergency communications systems, particularly the EMS CAD system, which is central to the Department's emergency response operations. Over the course of her tenure, respondent's responsibilities expanded from technical support functions to project and operational management, and information technology system implementation work affecting EMS operations citywide.

Respondent has worked through some of the most challenging periods in the city's history, including the September 11, 2001, terrorist attacks, Superstorm Sandy, and the COVID-19

pandemic, during which she continued supporting emergency communications infrastructure and operational continuity. Respondent described her and her team's efforts during those tragic events as requiring 100-hour weeks, rapid creative problem solving, and coordination across multiple units and agencies to ensure the reliability of emergency dispatch systems. Her role during these periods in the city's history is commendable.

Respondent's testimony reflected a strong personal commitment to public safety, particularly through the application of technology to improve emergency response systems. Her passion for her work cannot be overstated. She became known within the Department as a technical resource for complex EMS CAD issues and routinely maintained availability outside normal business hours. The documentary evidence submitted by petitioner concerning respondent's salary history further demonstrates the Department's reliance on respondent's expertise. In addition to showing that respondent received salary increases over the course of her career, it also contains a note indicating that respondent performed work that could not be completed by any other staff member at the time. During trial, multiple witnesses, including Ms. Deol and Mr. Thottam, identified respondent as a "subject matter expert" in EMS CAD operations and related technology, reflecting the Department's reliance on her institutional knowledge and technical experience.

Taken together, respondent's statements at trial and the documentary record establish that respondent has had a lengthy career characterized by high-level technical specialization, operational responsibility, and that she sustained service during periods of significant operational stress for the Department. Her tenure reflects a deep commitment to public service and the development of a highly specialized institutional knowledge in a critical public safety function.

However, the seriousness of the sustained misconduct cannot be overstated. Insubordination and discourteous conduct toward supervisors undermine the chain of command and impair the effective functioning of a public agency. Likewise, inaccuracies in time and leave records are not minor administrative matters; the Department is entitled to expect honesty and precision from its employees in matters affecting payroll and accountability. Such conduct, particularly where it implicates interactions with management and compliance with workplace rules, raises legitimate concerns about respondent's judgment and her willingness to conform her conduct to Department expectations.

Nevertheless, even where serious misconduct is established, termination is not automatic. As noted above, while the misconduct established here is serious and warrants meaningful discipline, the appropriate penalty must also be evaluated in light of respondent's overall record of service, her professional contributions to the Department, and whether the totality of the record demonstrates that the employment relationship has been irreparably damaged.

The record here establishes significant factors in mitigation that weigh overwhelmingly against termination. Respondent's career with the Department spans more than three decades of public service, during which she developed specialized institutional knowledge relating to critical public safety systems and supported Department operations during major emergency events in the City's history. Her experience, technical expertise, and longstanding role supporting essential EMS technology demonstrate that she remains capable of continued productive public service notwithstanding the misconduct established here. Furthermore, the record reflects that respondent expressed a willingness to conform her conduct to Department policies and supervisory directives going forward. *See Taxi & Limousine Comm'n v. Neubauer*, OATH Index No. 584/12 (Dec. 12, 2011), *adopted*, Comm'r Dec. (Dec. 23, 2011) (finding that "a penalty short of termination would give appropriate weight to his many years of service and his remorse.").

In light of respondent's unblemished prior record and her potential to continue as a valuable and productive public servant, respondent should be afforded an opportunity to correct her behavior. Accordingly, I recommend a penalty of 60 days' suspension without pay.

Orlando Rodriguez
Administrative Law Judge

May 27, 2026

Submitted To:

Lillian Bonsignore
Commissioner

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