

² The Department was previously known as the “Department of Fire and Rescue Services.”

Appellant had exhibited conduct unbecoming, thus violating MCPR § 33-5(c) (violates any established policy or procedure), MCPR § 33-5(d) (violates law), and DFRS Policy and Procedure No. 502 (Code of Conduct) §§ 3.1, 5.0, 5.3, & 5.14.

A hearing on the merits was conducted on May 20, 2025. After hearing the testimony and reviewing the exhibits, the appeal was considered and decided by the Board.³

FINDINGS OF FACT

The Board heard testimony from four witnesses, including Appellant. The following witnesses testified and are identified by their initials, or as “Appellant,” elsewhere in this decision:

1. J [REDACTED] C [REDACTED], Assistant Fire Chief, MCFRS (JC)

³ County Exhibits 1 through 35 were admitted into the record. Appellant did not file any exhibits. The County Exhibits are as follows:

CX 1 - Notice of Disciplinary Action
CX 2 – Appellant Internal Affairs Interview Audio
CX 3 – K [REDACTED] H [REDACTED] (KH) Internal Affairs Interview Audio
CX 4 – S [REDACTED] V [REDACTED] (SV) Internal Affairs Interview Audio
CX 5 – M [REDACTED] L [REDACTED] (ML) Internal Affairs Interview Audio
CX 6 – D [REDACTED] B [REDACTED] (DB) Internal Affairs Interview Audio
CX 7 – J [REDACTED] K [REDACTED] (JK) Internal Affairs Interview Audio
CX 8 – C [REDACTED] M [REDACTED] (CM) Internal Affairs Interview Audio
CX 9 – S [REDACTED] P [REDACTED] (SP) Internal Affairs Interview Audio
CX 10 – J [REDACTED] C [REDACTED] (FF JC) Internal Affairs Interview Audio
CX 11 – Appellant Internal Affairs Interview Transcript
CX 12 - Internal Affairs Acknowledgement form signed by Appellant
CX 13 - KH Internal Affairs Interview Transcript
CX 14 - SV Internal Affairs Interview Transcript
CX 15 – ML Internal Affairs Interview Transcript
CX 16 – DB Internal Affairs Interview Transcript
CX 17 – JK Internal Affairs Interview Transcript
CX 18 – CM Internal Affairs Interview Transcript
CX 19 - SP Internal Affairs Interview Transcript
CX 20 – FF JC Internal Affairs Interview Transcript
CX 21 – Photograph of KH
CX 22 – Text Messages
CX 23 – Video Recordings
CX 24 – Internal Affairs Investigative Report
CX 25 – MCPR Section 33-5
CX 26 – MCFRS Code of Conduct
CX 27 – MCFRS Executive Regulation 22-00
CX 28 – MCFRS Policies and Procedures No. 529, Internal Affairs
CX 29 – 2006 MOU Re: Levels of Discipline
CX 30 – Collective Bargaining Agreement, Article 30 - Discipline
CX 31 – Notice of Disciplinary Action dated September 12, 2024
CX 32 – Notice of Disciplinary Action dated March 12, 2023
CX 33 – Notice of Disciplinary Action dated December
CX 34 – Statement of Charges dated January 16, 2019
CX 35 – Notice of Disciplinary Action dated April 23, 2019

- Between November 12 and 13, 2023, Appellant sent several texts and shared photographs and videos that depict various verbal and physical exchanges between Appellant and his fiancée with the text group. Tr. 24:18 – 25:7. The County provided a video of the relevant comments in the text group exchange wherein Appellant stated, “I wanna kill her so angry I am,” “I can’t control myself,” “I’ve already put my hands on her,” and “But this is urgent! I think I should turn myself in . . . I’ve been beating up this woman for 2 days.” CX 22. The County entered the videos into evidence, which depict Appellant’s verbal and physical abuse towards KH, including one video in which Appellant appeared to be holding down KH with Appellant’s hand clenching KH’s neck. CX 23. KH can be heard in the videos telling Appellant to “stop” and that Appellant was hurting her. *Id.*

SV testified that, based upon his experience with Appellant, it was clear that Appellant was “suffering” and that “something pretty bad had happened that caused him to . . . get that upset.” Tr. 25:2. According to SV, the text messages were beyond upsetting and that it was “the worst thing [SV] had ever seen in a text message.”⁴ Tr. 26:8. SV stated that Appellant’s conduct in the videos did not reflect Appellant’s conduct while working. Tr. 26:9. SV testified that the group did not call the police; rather, one of the members of the group, Lieutenant D■■■■ B■■■■, intervened and convinced Appellant to seek help at a fire station. Tr. 30:11 – 31:13. The text group facilitated Appellant seeking help at a rehabilitation center. Tr. 30:14. The text group also reached out to KH to assess her wellbeing. Tr. 31:18.

After privately texting another member of the text chat, SV reported the text messages to MCFRS Assistant Chief JC, in the Department’s human resources division, administrative services section. Tr. 28:7. JC is responsible for overseeing the Department’s recruitment of civilian and uniformed personnel, promotional processes for uniformed personnel, and addressing discipline, grievances, and other labor and employee relations matters. Tr. 44:6. Upon receiving the information from SV, JC made a request to the Fire Chief for an internal investigation by the MCFRS Office of Investigative Programs. Tr. 48:2.

MCFRS Internal Affairs manager MB conducted the investigation into Appellant’s conduct. Tr. 74:11. MB was employed as a state trooper with the Maryland State Police from 1990 until he retired in 2015. Tr. 73:10. MB subsequently began his employment with MCFRS in 2015. Tr. 73:12. During his employment as a state trooper, MB responded to a variety of calls, including allegations of domestic violence. Tr. 74:1. MB was also assigned to a domestic violence unit for approximately two (2) years. Tr. 83:9.

MB reviewed the information provided by SV. Tr. 74:25. MB described the video wherein Appellant placed his hands upon KH’s neck. Tr. 76:21 – 77:4. Based upon his professional experience, MB testified that at the very least, conduct wherein a person puts their hands on somebody else’s neck rises to the level second degree assault, and that Maryland state law now includes enhanced penalties for “choking behaviors” in a domestic violence incident. Tr. 77:8. MB noted that throughout the videos, KH indicated that Appellant was “off his meds.” Tr. 91:8. MB also interviewed all members of the text group. Tr. 75:16.

MB interviewed Appellant on April 4, 2024. Tr. 80:7. During the interview, MB reviewed each text message and every video that was shared with the text group. Tr. 80:11. Appellant admitted that he was the male in the videos, identified his voice, and admitted to taking the videos that were shared with the text group. Tr. 81:4. Appellant admitted to assaulting KH on various occasions over the November 12 and 13, 2023. Tr. 81:9. Appellant also stated that he was not taking his medications as prescribed. Tr. 83:17; Tr. 90:12. According to MB, Appellant was professional, polite, and accepted responsibility for his actions. Tr. 90:2.

⁴ SV also testified that he was seeing therapists when discussing what he saw on the videos. Tr. 26:2. However, it’s not clear from his testimony whether the videos were the reason for why SV was seeking treatment.

MB also interviewed KH on November 20, 2023. Tr. 82:14. During the interview, KH confirmed Appellant's conduct, but that, based upon MB's experience investigating domestic violence related crimes, KH was clearly in the "domestic violence cycle," as she attempted to excuse Appellant's behavior, blaming herself for his conduct as well as stating that Appellant was not taking his medications as prescribed. Tr. 83:9. At some point during the interview, KH realized she was the victim of domestic violence and was appreciative that the Department was conducting its investigation. Tr. 83:23 – 84:5.⁵

Per JC, Appellant was dismissed from County service "for his actions on November 12 and 13 in relation to the assault of his fiancée in violation of Code of Conduct policy [502] which captures employee conduct on and off duty." Tr. 46: 24 – 47:9. JC also testified that the Department reviews each case on its own and applies what is commonly known as the *Douglas* factors to evaluate the level of discipline. Many of these factors are discussed in NODAs, and include consideration of the employees record, how the Department has handled like discipline in the past for consistency, the potential for rehabilitation and other mitigating circumstances. Tr. 68:10.

In this case the discipline that Appellant received was consistent with discipline received by other employees who were found to have engaged in domestic violence while off-duty. Tr. 58:11. According to JC, going back to approximately 2018, every case that involved domestic violence wherein discipline was sustained resulted in disciplinary dismissal. Tr. 48:14. During his testimony, JC reviewed five (5) NODAs from disciplinary actions involving domestic violence where the employee was dismissed. Tr. 50:1 – 56:3. *See* CXs 31 – 35.

JC stated the following as the rationale for the decision to dismiss employees who engage in domestic violence:

Part of the reason is because we are a public safety organization and as firefighters the organization has to hold our employees to a higher level of standard both on and off-duty. That is spelled out in our Code of Conduct policies, not only because we are public servants, but because we are also representatives of safety and trust to the public, right?

And with occasions of domestic violence like this or allegations of domestic violence or sustained cases of domestic violence, it undermines that trust that the public has in us and it also presents a potential safety concern for the organization in terms of liability, what if the act of domestic violence were to spill over into the workplace, for concerns of other employees' safety and/or what if that spills out into conduct against one of our residents that call 911 for assistance. And that conflicts with our overall values of the

⁵ According to MB, KH eventually obtained a protective order against Appellant based upon conduct that occurred after the conclusion of MB's investigation.

Department. That's why we take that stance on domestic violence and similar occasions. Tr. 56:8 – 57:4.

JC further testified that there is a nexus between domestic violence and employment as a firefighter:

[D]omestic violence is a problem in our county to the point where the Maryland protocols have specific hospitals that we transport victims of domestic and/or sexual assault to the facilities because they require specialty-type level care and these facilities throughout the State of Maryland are specialized for that.

So I would say yes, the other nexus would be that employees that engage in domestic-violence-type behavior shouldn't be in a position to be able to take care of the vulnerable population of transporting these domestic-violence victims to they are called safe facilities, the safe hospitals. Tr. 57:22 – 58:10.

Appellant testified that he began his career feeling strong and proud, but that over time, due to what he witnessed on the job, things started to change. Tr. 97:16. Appellant indicated that a major change occurred in July 2019. Tr. 97:21. Appellant was assaulted by a person with a knife just after Appellant lost a friend, he lost his wife, he began to drink alcohol more, and didn't sleep. *Id.* His coworkers, including SV noticed the changes and encouraged him to transfer to a different fire station. Tr. 98:1. Appellant testified that by the end of 2020 he "start[ed] asking for help loudly, vulnerably," and that he went to "rehab." *Id.* He further testified that he sent messages to County contacts and waited for callbacks. *Id.* However, COVID hit and, according to Appellant he was "sent home and told to wait." *Id.*

Appellant returned to rehab in 2020 and was prescribed Lexapro to help him with PTSD, mood swings, anxiety, depression, and insomnia. Tr. 98:10; Tr. 103:2. At first the medication helped; however, after a while he didn't like the way it made him feel. *Id.* He continued to use the medication as it was the only way he could return to work. *Id.* In December 2022, Appellant informed FROMS⁶ that he stopped taking the medication because he didn't like how it made him feel. Tr. 98:19. Appellant claimed that he was placed on light duty without any follow-up, no psychologist, and no plan to assist him. *Id.* Appellant reluctantly continued with the medication because he "needed the job." *Id.*

Appellant stopped taking the medications approximately ten (10) days prior to the conduct that formed the basis for his disciplinary dismissal. Tr. 99:4. After a forty-eight (48) hour shift, Appellant was exhausted, paranoid, and impulsive. *Id.* Then the events of November 12 and 13, 2023 occurred. *Id.* Appellant testified that he "hurt her," that he "hurt [himself]," and that at that moment he knew he needed help. *Id.*

⁶ FROMS is the Fire Rescue Occupational Medical Services. Tr. 107:13.

Appellant reentered rehab but claimed that the rehab facility took his medication away without properly monitoring him. Tr. 99:11. Appellant began having suicidal thoughts and was moved to another rehab facility. *Id.* He claimed he had no support, and that the County never followed up with him. *Id.* During his testimony, Appellant asked the Board for help. Tr. 100:2. Appellant also testified that he no longer wishes to take the medication. Tr. 101:15.

Under cross examination, Appellant admitted that he is currently treating with a doctor from Brazil. Tr. 103:20. However, the doctor is unable to prescribe medication to Appellant. Tr. 104:4. Appellant also admitted that JC referred Appellant to the County's fire rescue therapist "a couple of times." Tr. 104:11. Appellant also admitted that when he stopped taking his medication in 2022, he did not tell his treating physician. Tr. 106:21. Appellant testified that he didn't know it was a "big deal." *Id.* He eventually told the FROMS doctor he was no longer taking the medication, who in turn informed Appellant that he could not return to work unless he resumed the medication. Tr. 107:2. Appellant was then placed on a light duty assignment until he resumed the medications. Tr. 108:5. Appellant then admitted that he failed to fill his Lexapro prescription "because just life happened." Tr. 108:21.

Appellant also testified under cross examination that the Center for Excellence would not take him in due to the videos of his conduct. Tr. 110:18. Rather, Appellant entered a rehab facility in Florida that focused on first responders. Tr. 111:3. Appellant did not successfully complete the treatment at this facility, as he was asked to leave after he had an argument with other patients and had "an emotional connection with one of the girls there." Tr. 113:7. Appellant entered another rehab at FRG⁷. Tr. 113:17.

Appellant also received an email from JC on May 1, 2025, providing Appellant with information regarding who Appellant may call to obtain mental health assistance from the Department. Tr. 119:18. At first, Appellant denied that he received such an email, but he later admitted he received it. *Id.*

APPLICABLE CODE PROVISIONS, REGULATIONS, POLICIES, AND COLLECTIVE BARGAINING AGREEMENT PROVISIONS

CHARTER OF MONTGOMERY COUNTY, MARYLAND

Sec. 404. Duties of the Merit System Protection Board.

Any employee under the merit system who is removed, demoted, or suspended shall have, as a matter of right, an opportunity for a hearing before the Merit System Protection Board, which may assign the matter to a hearing examiner to conduct a hearing and provide the Board with a report and recommendations. The charges against the employee shall be stated in writing, in such form as the Board shall require. If the Board assigns the matter to a hearing examiner, any party to the proceeding shall have, as a matter of right, an opportunity to present an oral argument on the record

⁷ The parties did not provide any testimony or information as to what "FRG" is other than it's a rehabilitation facility not geared towards first responders. Tr. 113:19.

before the Board prior to a final decision. The Board shall establish procedures consistent with law for the conduct of its hearings. The decisions of the Board in such appeals shall not be subject to review except by a court of competent jurisdiction. The Council shall provide by law for the investigation and resolution of formal grievances filed under the merit system and any additional duties or responsibilities of the Board. The Board shall conduct on a periodic basis special studies and audits of the administration of the merit system and retirement pay systems and file written reports of its findings and recommendations with the Executive and the Council. The Board shall comment on any proposed changes in the merit system law or regulations in a timely manner as provided by law.

MONTGOMERY COUNTY CODE

Sec. 2-39A. Structure.

* * *

- (b) Department of County government. The Montgomery County Fire and Rescue Service is a department of County government under the County Charter. The Fire Chief is Director of the Department. The Department consists of a Division of Volunteer Services, a Division of Fire and Rescue Operations, and any other divisions necessary for effective management and administration of the Department.

* * *

Sec. 33-12. Appeals of disciplinary actions; grievance procedures.

- (a) Appeals of certain disciplinary actions. Any merit system employee, excluding those in probationary status, who has been notified of impending removal, demotion or suspension shall be entitled to file an appeal to the board, which shall cause a hearing to be scheduled without undue delay unless the appeal has been settled during administrative review of the appeal by the chief administrative officer or a designee. Any merit system employee who is the subject of other disciplinary action not specified above may file an appeal with the board, but such appeal may or may not require a hearing as the board may determine.

* * *

MONTGOMERY COUNTY PERSONNEL REGULATIONS, 2001

SECTION 2. GENERAL PROVISIONS

- 2-9. Conflict between a collective bargaining agreement and the Personnel Regulations. If a provision of these Regulations is inconsistent with a collective bargaining agreement, the agreement applies to any employee in the bargaining unit.

SECTION 33. DISCIPLINARY ACTIONS

33-2. Policy on disciplinary actions.

- (a) Purpose of disciplinary actions. A department director may take a disciplinary action against an employee to maintain order, productivity, or safety in the workplace.

* * *

- (c) Progressive discipline.

- (1) A department director must apply discipline progressively by increasing the severity of the disciplinary action proposed against the employee in response to:

- (A) the severity of the employee's misconduct and its actual or possible consequences; or

- (B) the employee's continuing misconduct or attendance violations over time.

- (2) Progressive discipline does not require a department director to apply discipline in a particular order or to always begin with the least severe penalty. In some cases involving serious misconduct or a serious violation of policy or procedure, a department director may bypass progressive discipline and dismiss the employee or take another more severe disciplinary action.

- (d) Consideration of other factors. A department director should also consider the following factors when deciding if discipline is appropriate or how severe the disciplinary action should be:

- (1) the relationship of the misconduct to the employee's assigned duties and responsibilities;

- (2) the employee's work record;

- (3) the discipline given to other employees in comparable positions in the department for similar behavior;

- (4) if the employee was aware or should have been aware of the rule, procedure, or regulation that the employee is charged with violating; and

- (5) any other relevant factors.

33-3. Types of disciplinary actions.

* * *

- (h) Dismissal. Dismissal is the removal of an employee from County employment for cause.

33-4. Authority to take disciplinary action.

- (a) An immediate supervisor may give an employee an oral admonishment.
- (b) A department director may take any disciplinary action under these Regulations.
- (c) A department director may delegate the authority to take any type of disciplinary action to a lower level supervisor. The delegations must be in writing.

33-5. Causes for disciplinary action. The following, while not all-inclusive, may be cause for a disciplinary action by a department director against an employee who:

* * *

- (c) violates any established policy or procedure;
- (d) violates any provision of the County Charter, County statutes, ordinances, regulations, State or Federal laws, or is convicted of a criminal offense, if such violation is related to, or has a nexus with, County employment;

* * *

33-9. Right of an employee to appeal a disciplinary action.

* * *

- (b) Right to appeal a disciplinary action to the MSPB.
- (1) Right to file a direct appeal to the MSPB. An employee with merit system status may appeal a demotion, suspension, or dismissal by filing an appeal directly with the MSPB under Section 35 of these Regulations. An employee who files a direct appeal must not also file a grievance on the same disciplinary action.

* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS AND INVESTIGATIONS

35-2. Right of appeal to MSPB.

- (a) Except as provided in Section 29-7 of these Regulations, an employee with merit system status has the right of appeal and a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal, or involuntary resignation and may file an appeal directly with the MSPB.

* * *

MONTGOMERY COUNTY FIRE AND RESCUE SERVICES POLICIES AND PROCEDURES

Montgomery County Department of Fire and Rescue Services, Policies and Procedures, *Code of Conduct, Code of Personal Conduct*, No. 502, May 6, 1996.

* * *

- 3.1 All employees are to adhere to Departmental policies and procedures, County Administrative Procedures, Executive Orders, Montgomery County Personnel Regulations and Charter and to conform to all laws applicable to the Fire-Rescue-EMS Services and the general public.

* * *

- 5.0 Employees will, at all times, conduct themselves in such a manner as to reflect favorably on the DFRS and Fire-Rescue-EMS Service in general. While this policy applies at all times, it is especially important when employees are wearing any portion of a fire department uniform that identifies the Department, have in their possession anything that identifies them with the DFRS or are on County or Corporation property.

* * *

- 5.3 Employees will be courteous and discreet toward each other, volunteer personnel and the public, and maintain proper decorum and command of temper. Employees will not use violent, insolent or obscene language in public, or as otherwise restricted, while on duty.

* * *

- 5.14 No employee will commit any act which constitutes conduct unbecoming a merit system employee. "Unbecoming" conduct includes, but is not limited to, any criminal, dishonest or improper conduct.

***COLLECTIVE BARGAINING AGREEMENT BETWEEN THE MONTGOMERY COUNTY
CAREER FIRE FIGHTERS ASSOCIATION, INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1664, AFL-CIO AND MONTGOMERY COUNTY
GOVERNMENT***

ARTICLE 30. DISCIPLINE.

Section 30.1. Policy.

- A. The Employer shall not suspend, discharge or otherwise discipline any employee of the bargaining unit except for cause.
- B. Once the Employer has determined there is cause to discipline an employee, the Employer agrees to give due consideration to the relevance of any mitigating and/or aggravating factors, in deciding the nature and level of disciplinary action appropriate, including, but not limited to:
 - 1. the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
 - 2. the employee's job level and type of employment, including his or her supervisory or fiduciary role, the frequency and level of his or her contact with the public, and the prominence of his or her position;
 - 3. the employee's past disciplinary record;
 - 4. the employee's past work record, including his or her length of service to the Department, his or her job performance, his or her demonstrated ability to get along with fellow Department employees, and his or her dependability;
 - 5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Employer's confidence in the employee's ability to perform assigned duties;
 - 6. the consistency of the penalty with those imposed upon other employees with similar personnel history for the same or similar offense(s);
 - 7. the notoriety of the offense or its impact upon the reputation of the Employer;
 - 8. the clarity with which the employee was actually on notice of any rules, regulations, directives, policies, orders, instructions or the like that were

violated in committing the offense, or had been warned about the conduct in question;

9. the potential for rehabilitation;
10. mitigating circumstances surrounding the offense, such as unusual job tensions, personality conflicts, mental impairment, harassment, bad faith, or malice or provocation on the part of others involved in the matter; and,
11. the potential adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

ISSUE

Was Appellant's dismissal consistent with law and regulation and otherwise appropriate?

ANALYSIS AND CONCLUSIONS

Burden of Proof

In a disciplinary matter, the County bears the burden of proving its case by a preponderance of the evidence. Montgomery County Code, Administrative Procedures Act (APA), § 2A-10. The Board has explained that preponderance of the evidence exists when evidence presented has more convincing force than the opposing evidence, and thus results in a belief that such evidence is more likely true than not. MSPB Case No. 17-13 (2017); MSPB Case No. 13-03 (2013). *See, Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 137 n. 9 (1997); *Commodities Reserve Corp. v. Belt's Wharf Warehouses, Inc.*, 310 Md. 365, 370 (1987); *Muti v. University of Maryland Medical System*, 197 Md. App. 561, 583 n.13 (2011), *vacated on other grounds* 426 Md. 358 (2012) ("the preponderance of evidence standard generally translates to a greater-than-fifty-percent probability").

Appellant's position – Firefighter III – with MCFRS is a position that falls within the Fire and Rescue collective bargaining unit. *See* MCC §§ 33-147, *et seq.* Positions within this bargaining unit are currently represented by the Montgomery County Career Fire Fighters Association, International Association of Firefighters, AFL-CIO, Local #1664 (IAFF) and are subject to the collective bargaining agreement (CBA) between Montgomery County, Maryland, and IAFF. *See* IAFF CBA Art. 1. The County and IAFF have negotiated provisions associated with disciplinary actions, which is found in CBA Article 30. Pursuant to MCPR § 2-9, when CBA provisions are inconsistent with the Personnel Regulations, the provisions in the CBA apply to

bargaining unit members. Accordingly, the Board must apply the CBA provisions associated with discipline to this case.

Cause

Section 30.1.A of the CBA requires that the County may only discipline an employee for cause. The CBA does not define “cause.” However, MCPR § 33-5 provides numerous scenarios wherein cause may be proved, including subsections (c) (violates any established procedure) and (d) (violates any provision of the County Charter, County statutes, ordinances, regulations, State or Federal laws, or is convicted of a criminal offense, if such violation is related to, or has a nexus with, County employment).

Conduct Unbecoming and Violation of the Law

The County charged Appellant with conduct unbecoming for verbally abusing and physically assaulting KH, which the County argues is a violation of MCFRS policies and procedures and MCPR § 33-5(c). Under the DFRS Code of Conduct §§ 5.0, 5.3 & 5.14, Appellant was required to conduct himself “in a manner as to reflect favorably on the DFRS” and not to “commit any act which constitutes conduct unbecoming a merit system employee.” Section 5.14 specifically provides that conduct unbecoming “includes, but is not limited to, any criminal, dishonest or improper conduct.” The County also charged Appellant with violating MCPR § 33-5(d), alleging that Appellant’s conduct violated Maryland criminal laws, wherein the crime of assault is either a misdemeanor or a felony offense, punishable by imprisonment up to ten (10) years for a misdemeanor or up to twenty-five (25) years for a felony, depending on the degree of the assault. *See* Crim. Law, Md. Code Ann. §§ 3-202 and 3-203.

Appellant did not dispute the allegations against him. We find that the County proved by preponderant evidence that Appellant verbally abused and physically assaulted KH on November 12 and 13, 2023. Appellant’s texts and videos, Appellant’s statements to the Internal Affairs Investigator, and KH’s statements to the Internal Affairs Investigator provide ample support for a finding that Appellant verbally abused and physically assaulted his fiancée. Appellant’s violent conduct unequivocally falls within the definition of “unbecoming conduct,” which violates MCFRS policies and procedures, and, in turn, violates MCPR §§ 33-5(c) & (d).⁸

Nexus to Employment

When, as here, the County seeks to discipline an employee on charges that involve off-duty misconduct, the County bears the burden of proving that there is a nexus between the alleged misconduct and the employee’s position with the County. *See* MSPB Case No. 19-16 (2019). In MSPB Case No. 16-08 (2016), we held that:

⁸ Although Appellant was not criminally charged for his conduct, the Personnel Regulations do not require a judgment or conviction prior to disciplining employees for conduct that would otherwise be considered a violation of the law.

Nexus may be demonstrated simply by showing that an employee engaged in off-duty misconduct that is inconsistent with the agency's mission and undermines confidence in the employee.

Thus, for example, the Board has sustained disciplinary action against a firefighter who engaged in domestic violence (MSPB Case No. 19-16); a firefighter who assaulted a prostitute (MSPB Case No. 16-08 (2016)); a correctional officer involved with illegal narcotics (MSPB Case No. 14-17 (2014)); as well as a security officer engaged in domestic violence (MSPB Case No. 14-19 (2014)).

Consistent with our prior decisions, we find that the County has met its burden. The Board has previously held that strangulation of one's significant other is violent and potentially life-threatening, and that such a serious assault may provide sufficient nexus and warrant removal, especially where Appellant's job involves responding to the homes of County citizens. *See* MSPB Case No. 19-16; *Hayes v. Department of Navy*, 727 F.2d 1535, 1539 (Fed. Cir. 1984) (for purposes of nexus agency properly concerned about off duty domestic abuser's access to residential housing in connection with work as a mechanical planner-estimator). As was the case with the appellant firefighter in Case No. 19-16, Appellant's position as a firefighter with MCFRS is dedicated to the protection and preservation of life, health, and safety. Appellant's violent domestic assault was inconsistent with the MCFRS mission and a job in which Appellant would be entrusted with the health and safety of the citizens of Montgomery County. *Cf.*, MSPB Case No. 14-19 (2014) (Domestic violence is incompatible with the responsibilities of a security officer to protect the safety of County employees). *See Social Security Administration v. Long*, 2010 M.S.P.B. 19, 113 M.S.P.R. 190 (2010), *aff'd*, 635 F.3d 526 (Fed. Cir. 2011) (ALJ dismissed for domestic violence; victim recanted, criminal charges dropped); *Kinslow v. Department of the Treasury*, 315 F. App'x 286, 289 (Fed. Cir. 2009) (removal of an IRS agent who assaulted his wife); *); Carlton v. Department of Justice*, 95 M.S.P.R. 633 (Deputy U.S. Marshal dismissed for choking, throwing vase, and pointing gun at wife; "misconduct was serious and raises serious concerns about his lack of judgment and impulse control and his ability to perform the duties of his position."), *review dismissed*, 115 F. App'x 430 (Fed. Cir. 2004). *Banks v. Dep't of Veterans Affairs*, 25 F. App'x 897, 900 (Fed. Cir. 2001) (VA hospital food service worker's domestic violence assault provides nexus). The nexus in this case is strengthened by the fact that Appellant shared the videos of the violence with his co-workers, which clearly had a negative impact on the members of the texting group, as evidenced by Chief V[REDACTED]'s testimony during the hearing.

We therefore find that Appellant's egregious behavior violated MCPR § 33-5(c) & (d), and DFRS Code of Conduct §§ 5.0, 5.3 & 5.14 (conduct unbecoming). Accordingly, it was proper for the County to issue discipline against Appellant for his conduct.

Level of Discipline

The Board, having determined that discipline is proper in this case, now turns to the level of discipline issued to Appellant. Montgomery County Code § 33-14(c) grants the Board substantial latitude to decide the appropriate level of penalty. *Robinson v. Montgomery County*, 66 Md. App. 234, 243 (1986). The Board will normally uphold an agency determined penalty

unless we find some aspect of the personnel action to have been improper. MSPB Case No. 19-16 (2019).

Section 30.1(B) of the IAFF CBA requires the County to consider several factors, known as *Douglas* factors, when determining level of discipline. This Board has not formally adopted the factors in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). See MSPB Case No. 19-20 (2019); MSPB Case No. 17-20 (2018); MSPB Case No. 00-22 (2000). Nor does it need to do so at this time. However, per the IAFF CBA, the County is required to consider said factors when determining level of discipline. Accordingly, from a procedural standpoint, the County has the burden of proving that the County considered each of these factors when it levied the discipline in this case.

Per MCPR § 33-4(b), department directors have the authority to take disciplinary action against employees. That authority may be delegated to a lower-level supervisor, but the delegation must be in writing per MCPR § 33-4(c). The Fire Chief is the department director for MCFRS. See MCC § 2-39A(b). In this case, the Fire Chief did not testify. Thus, the Board did not receive testimony from the individual with the authority to issue discipline and to explain how he considered each factor listed in IAFF CBA § 30.1.B. We have warned the County before that “while the Board is not bound by the County’s choice of penalty, and does not defer to that choice in any significant way, it is much more likely to sustain a County-imposed penalty if it is clear on the record that these factors have been considered and the individuals who in fact made those considerations are called to testify.” MSPB Case No. 19-20 (2019); MSPB Case NO. 20-17 (2020).

While Chief C█████ testified that the Fire Chief considered the *Douglas* factors, the County did not elicit testimony explaining how each factor was weighed. Tr. 43:13 – 69:17. Similarly, the NODA lacks sufficient information for how each of the *Douglas* factors were weighed when deciding the level of discipline. CX 1. Chief C█████ acknowledged as much when he testified that the NODA contained a list of the *Douglas* factors that the Department considered, “for the most part.” Tr. 68:14-16. Such testimony and evidence would have shown that the County considered each of the listed factors. Nevertheless, Appellant has not argued that his discipline was the result of procedural deficiencies in the disciplinary process, or that the Department did not properly consider each of the *Douglas* factors. Without testimony to the contrary, we determine that the County did, in fact follow the procedure as outlined in IAFF CBA § 30.1.B.

Turning to the specific discipline in this case, to his credit, Appellant admitted to verbally abusing and physically assaulting KH to Internal Affairs investigators. Furthermore, at no point during his testimony did Appellant suggest that he should not receive discipline; rather, Appellant testified that he did not deserve to have his job back. Tr. 38:17. At the same time, Appellant seemingly suggests that the level of discipline is too severe and that the Department should have provided him with help.

However, throughout his testimony during cross-examination, Appellant revealed that the County has provided him with opportunities for help. Indeed, as recent as twenty (20) days prior to the hearing, and well after Appellant's dismissal, JC emailed Appellant with information for how Appellant could obtain help through MCFRS. In fact, it was Appellant who decided not to use the County's psychologist back in 2020. Tr. 115:18. We are also concerned that, after all that transpired, and after Appellant suggested that his conduct was in part due to not taking his medication, Appellant no longer wishes to take said medication.

In this case, the facts support a finding that Appellant committed the acts for which he was charged, and support a conclusion that he violated the provisions of law under which he was charged. By his own admission Appellant's behavior merits significant discipline. Although we have concerns regarding the lack of testimony from the Fire Chief regarding his decision to dismiss Appellant, we do not find sufficient mitigating circumstances to justify reducing the penalty. Thus, we believe that the County provided an adequate explanation for the Fire Chief's determination that Appellant's serious misconduct justified the highest level of discipline.


Accordingly, we conclude that the discipline of dismissal was appropriate and consistent with law. Although we are denying the Appeal, we encourage Appellant to review the information provided by JC on May 1, 2025, to determine what services are currently available to Appellant.

ORDER

For the foregoing reasons, the Board **DENIES** Appellant's appeal of his dismissal.

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, § 33-15, *Judicial review and enforcement*, and MCPR, § 35-18, *Appeals to court of MSPB decisions*, within 30 days of this Order an appeal may be filed with the Circuit Court for Montgomery County, Maryland, in the manner prescribed under Chapter 200, Title 7 of the Maryland Rules.

For the Board
June 24, 2025


Sonya E. Chiles
Chair