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

In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup>	)	
	)	OEA Matter No. J-0009-26
v.	)	
	)	Date of Issuance: June 4, 2026
D.C. DEPARTMENT OF GENERAL	)	
SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Employee worked as a Program Analyst with the D.C. Department of General Services (“Agency”). On October 23, 2025, Agency issued a notice of termination to Employee. The notice provided that Employee would be terminated during her probationary period pursuant to District Personnel Manual (“DPM”) § 227.<sup>2</sup> On November 6, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). She argued that she was wrongfully terminated because Agency misclassified her as a probationary employee when she completed her Career Service probationary period prior to her assuming the Program Analyst role. As a result, she

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<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

<sup>2</sup> *Petition for Appeal*, p. 5 (November 6, 2025).

requested that she be reinstated and receive backpay and benefits.<sup>3</sup>

On December 5, 2025, Agency filed a Motion to Dismiss. It contended that Employee's previous Career Service probationary period did not waive the requirement for her to serve another probationary period. According to Agency, Employee was converted from an Excepted Service Program Analyst position in the Executive Office of the Mayor to a Career-Probation Program Analyst role with Agency. It explained that Employee's last Career Service position was as a Dispatcher with the D.C. Office of Unified Communications ("OUC"). Agency contended that Employee was subject to a second probationary period because she was competitively hired and because the requirements and skills for a Dispatcher and Program Analyst are substantially different. It asserted that because Employee was still within her probationary period at the time of termination, she could not appeal to OEA.<sup>4</sup> Agency claimed that OEA lacked jurisdiction over probationary employees and requested that Employee's petition be dismissed.<sup>5</sup>

On December 8, 2025, Employee filed an Opposition to Agency's Motion to Dismiss. She argued that she had been a Career Service employee since 2015, without a break in service. Employee asserted that her transition to an Excepted Service role did not sever her Career Service tenure. Additionally, she contended that she was not competitively hired, but she was instead placed via an inter-agency move. Thus, according to Employee, she was not appointed as a result of open competition. Consequently, she requested that Agency's Motion to Dismiss be denied.<sup>6</sup>

The OEA Administrative Judge ("AJ") issued an Order Requesting Briefs on Jurisdiction.<sup>7</sup> In her brief, Employee argued that Agency failed to provide sufficient evidence of a reliable

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> According to Agency, Employee was hired on March 23, 2025, and she was terminated effective November 7, 2025. Therefore, she was still within her probationary period.

<sup>5</sup> *Agency's Motion to Dismiss* (December 5, 2025).

<sup>6</sup> *Petitioner's Opposition to Agency's Motion to Dismiss* (December 8, 2025).

<sup>7</sup> *Order to Employee* (December 8, 2025).

personnel record to support that she was in a probationary status or that she was hired through open competition. She contended that Agency's reliance on reviewing resumes and informal phone calls did not constitute open competition and could not be used to impose a new probationary period. Therefore, she requested that the Motion to Dismiss be denied and that OEA issue a decision on the merits of her case.<sup>8</sup>

Agency filed its Response to Employee's Brief on Jurisdiction on January 12, 2026. It maintained its argument that Employee was converted from an Excepted Service appointment to a Career Service position and was, therefore, serving in a probationary period at the time of her removal.<sup>9</sup> Agency also argued that competitive hiring in the District government does not require interviews and that a top candidate could be selected internally or externally without assembling an interview panel. Agency asserted that Employee's Standard Form 50 ("SF-50")<sup>10</sup> clearly indicated that she was subject to a one-year probationary period. Accordingly, it contended that OEA lacked jurisdiction to consider her removal and requested that Employee's appeal be dismissed.<sup>11</sup>

On February 27, 2026, the AJ issued an Initial Decision. He held that pursuant to DPM §§ 226.2(a) and 227.4, an employee's termination during a probationary period is not appealable to OEA. The AJ found that Agency sought candidates for positions at its Winter Job Fair and received Employee's resume along with eleven others for the Program Analyst role. According to the AJ, Agency's Associate Director's review of the resumes and discussions with Employee established that Employee was competitively hired and placed into her Career Service position as

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<sup>8</sup> *Employee's Jurisdiction Brief* (December 22, 2025).

<sup>9</sup> Agency noted that Excepted Service positions are political positions within the District Government. These positions do not come with Career Service protections or guarantees and are a fundamentally unique employment type from that of Career Service.

<sup>10</sup> SF-50 is the D.C. Government's Notification of Personnel Action.

<sup>11</sup> *Agency's Response to Employee's Jurisdiction Brief and Petitioner's Oppositions to Agency's Motion to Dismiss*, p. 1-9 (January 12, 2025).

a Program Analyst with Agency. Moreover, the AJ found that Employee's SF-50 indicated that she was to serve another probationary period as a Program Analyst at Agency. He further held that Employee's Program Analyst position was in a different line of work from her prior job. As a result, the AJ determined that Employee was required to serve a new probationary period. Consequently, he dismissed Employee's Petition for Appeal for lack of jurisdiction.<sup>12</sup>

Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on March 2, 2026. She contends that the AJ's findings are not supported by substantial evidence. Employee asserts that the Initial Decision offered a general reference to positions of different skills and in a different line of work, and it did not address different educational, licensure, certification, or qualifications. Additionally, she maintains that she was not required to serve a second probationary period because she was not hired through open competition and that Agency failed to provide evidence to substantiate its claim of open competition. As a result, Employee requests that the Board grant her Petition for Review, reverse the Initial Decision, and find that OEA has jurisdiction to consider her case on its merits.<sup>13</sup>

Agency filed its Response to Employee's Petition for Review on April 16, 2026. It asserts that the Initial Decision is based on substantial evidence. Agency opines that the four positions held by Employee were all in different series and had different duties and skills. It provides that Employee was also subject to a new probationary period because she was hired for a different Program Analyst position in a new agency. Agency maintains that Employee was required to serve a new probationary period because she was hired through open competition. It reasons that Employee's resume was considered for an open vacancy along with a plethora of other candidates; the hiring manager spoke to candidates; and the hiring manager subsequently ranked the

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<sup>12</sup> *Initial Decision*, p. 3-7 (February 27, 2026).

<sup>13</sup> *Petition for Review* (March 2, 2026).

candidates. Consequently, Agency claims that OEA lacks jurisdiction to consider the appeal and requests that Employee's Petition for Review be dismissed.<sup>14</sup>

### Substantial Evidence

OEA Rule 633.3 provides that the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.<sup>15</sup>

### Open Competition

This Board previously held that a probationary period is to help agencies determine if an employee is suitable for a role and if they have the knowledge, skills, and abilities to serve in the position for which they were hired.<sup>16</sup> The primary issue in this matter is whether Employee had to serve another probationary period for the Program Analyst role. DPM § 226.2(c) provides that "an employee who once satisfactorily completed a probationary period in the Career Service shall be required to serve another probationary period when the employee is appointed through open competition to a position with different licensure, certification, or other similar requirements." As the AJ held, DPM § 299 defines open competition as "a hiring process that considers all applicants within an area of consideration for a given job." The AJ reasoned that Agency considered Employee's resume and those of eleven others that it received during a Winter Career Fair. As a

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<sup>14</sup> *Agency's Opposition to Employee's Petition for Review* (April 16, 2026).

<sup>15</sup> *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

<sup>16</sup> *Employee v. D.C. Department of For-Hire Vehicles*, OEA Matter No. J-0013-24, *Opinion and Order on Petition for Review* (November 6, 2025).

result, he found that Employee was competitively placed into the Program Analyst role.<sup>17</sup>

However, other than Agency's assertions that Employee was competitively hired, there is nothing in the record to indicate that there was open competition. In *D.C. Fire and Emergency Medical Services Department v. D.C. Office of Employee Appeals and Sylvia Johnson*, 2018 CA 000821 P(MPA)(D.C. Super. Ct. April 2, 2020), the Superior Court for the District of Columbia Court held that Box 34 on a Standard Form 50 could be used to indicate that an appointment was acquired through open competition. In the SF-50 provided by Agency, Box 34 is blank.<sup>18</sup>

According to Agency, its Associate Director Stokes reviewed a plethora of resumes from its Winter Career Fair; ranked the candidates; and spoke with each candidate as evidence of open competition. However, the record is not clear that the eleven resumes provided by Agency were submitted or considered for the Program Analyst position. There are handwritten notes on some resumes. On seven of the resumes, the word "communications or comms" is written on the top of the first page. The words "comms/program analyst" is written on one resume; the writing on one resume is illegible; and there was nothing written on three resumes.<sup>19</sup> On its face, only one resume indicated that it was for the program analyst position. There is no vacancy announcement number or any other indication that the resumes were submitted or reviewed for the Program Analyst role. Moreover, there is no evidence in the record of the ranking that Agency performed. Thus, in its current state, the record does not clearly show that Employee was hired as the result of open competition.

#### Probationary Period

Again, DPM § 226.2(c) provides that if an employee satisfactorily completed a

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<sup>17</sup> *Initial Decision*, p. 5 (February 27, 2026).

<sup>18</sup> *Agency's Motion to Dismiss*, p. 9 (December 5, 2025).

<sup>19</sup> *Id.*, 16-40.

probationary period in the Career Service, they would only be required to serve another probationary period if their position requires a different licensure, certification, or other similar requirements. Employee's SF-50 does indicate that she was to serve a probationary period. Box 6-B of the form indicated that the position is "Career – Probation." Similarly, Box 6-D of the form provides that the role is probationary by outlining "D.C. Code Sec. 1-608.01(a)(4) Career w/ Probation." Finally, in Box 45 of the SF-50, the remarks provide that the position is "subject to completion of a one (1) year probationary period. . . ." <sup>20</sup>

However, Employee opines that her prior government service is creditable, and a new probationary period was not required.<sup>21</sup> Moreover, she argues that the Initial Decision did not identify the differences between her prior Career Service position and the Program Analyst role. She asserts that the AJ only offered a generalized reference to a different skillset or line of work. Contrary to Employee's arguments, Agency claims that she was required to serve another probationary period because her role as a Program Analyst was substantially different and in a different line of work than her previous positions, and therefore, she was subject to another probationary period. In its response to the Petition for Review, Agency outlines the differences in job series and job duties in all of Employee's prior roles.<sup>22</sup>

In *Employee v. D.C. Commission on Judicial Disabilities and Tenure*, OEA Matter No. J-0023-25, *Opinion and Order on Petition for Review* (January 29, 2026) and *Employee v. D.C. Department of For-Hire Vehicles*, OEA Matter No. J-0013-24, *Opinion and Order on Petition for Review* (November 6, 2025), this OEA Board found that a thorough outline of the substantial differences in knowledge and duties between positions is needed when determining the need for

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<sup>20</sup> *Id.*

<sup>21</sup> *Petition for Review*, p. 2-3 (February 27, 2026).

<sup>22</sup> *Agency's Opposition to Employee's Petition for Review*, p. 5-7 and 13 (April 16, 2026).

another probationary period. Unfortunately, the AJ offered a curt and conclusory statement that the positions were different. However, a meaningful comparative analysis of the duties of Employee's previous Program Analyst and/or the Dispatcher positions and the Agency's Program Analyst position by the AJ is required.

Furthermore, in its response to Employee's Petition for Review, Agency argued that there are differences in job series and job duties between the positions.<sup>23</sup> However, it does not provide actual evidence of the differences in job series or duties other than its assertions. In *Employee v. D.C. Commission on Judicial Disabilities and Tenure* OEA Matter No. J-0023-25 (August 25, 2025), an OEA Administrative Judge found that the difference in job series and job duties was substantial enough to require a new probationary period.<sup>24</sup> Although Employee's past positions may appear markedly different based on a general understanding of the positions, there is no position description in the record that outlines Employee's duties as a Dispatcher. Additionally, the Administrative Judge and Agency indicate that Employee held a Program Analyst role with the Mayor's Executive Office immediately preceding her Program Analyst role with Agency. The differences in that role and the Agency analyst position and/or evidence that it was an Excepted Service position may also be helpful for the AJ to consider.

### Conclusion

Other than Agency's assertions that Employee was competitively hired, there is nothing in the record to indicate that there was open competition. Additionally, a comparative analysis of the differences in licensure, certification, or other similar requirements was not provided in this case.

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<sup>23</sup> Agency provided the following documents as attachments to its Opposition to the Petition for Review: a list of positions for Agency's Winter Hiring Event from February 11, 2025; the vacancy announcement for Agency's Program Analyst position; screenshots of Personnel Action Requests for Agency's Program Analyst position.

<sup>24</sup> Similarly, in *Employee v. D.C. Department of For-Hire Vehicles*, OEA Matter No. J-0013-24, *Opinion and Order on Petition for Review* (November 6, 2025), this OEA Board previously considered if the positions are in similar or different job series to determine if a second probationary period is required.

Therefore, this Board grants Employee's Petition for Review and remands this matter to the Administrative Judge for further consideration.

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED**, and the matter is **REMANDED** for further consideration.

**FOR THE BOARD:**

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Pia Winston, Chair

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Arrington L. Dixon

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LaShon Adams

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Jeanne Moorehead

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.