

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021) states:

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

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.³

OEA Rule § 631.2 *id.* states:

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

JURISDICTION

For the reasons explained below, the jurisdiction of this Office has not been established in this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Safety Technician/Crossing Guard. In a Final Notice dated March 26, 2021, Employee was terminated from service effective April 2, 2021. Employee was terminated for the following cause of action: “*Attendance-related offense: Unauthorized absence of five (5) workdays or more, pursuant to DPM §1605.4 (f)(4).*” On March 13, 2026, Employee filed his Petition for Appeal at OEA.

Employee’s Position

Employee avers that he was wrongfully terminated because the Agency failed to provide “proper and timely notice of this action.”⁴ Employee asserts that the Agency “claims the notice was sent in February 2021, [h]owever, the paperwork produced by the Agency lists 250 M Street, SE address-a headquarters that was not officially open or occupied until late February 2021.”⁵ Additionally, Employee argues that the Agency “actively concealed [his] employment status” and that he was not notified of the separation from service until August 27, 2021.⁶ Employee also notes that he was on “active workers’ compensation leave” during this entire period and through June 2022. Employee avers that during his “repeated attempts to obtain the basis for this removal starting in August 2021, the Agency withheld [his] personnel file until March 2022.” As such, Employee contends that the “statutory clock must be tolled as the Agency’s action occurred while [he] was in protected medical status.” Employee also avers that he sought assistance from his Union to try to

³ OEA Rule § 699.1.

⁴ Employee’s Petition for Appeal. (March 13, 2026).

⁵ Employee’s Brief on Jurisdiction (May 7, 2026).

⁶ *Id.*

resolve the matter administratively. Employee cites that he tried to engage in a grievance process but “was met with further administrative silence.” Employee argues that his “Union’s failure to respond or act left [him] with no choice but to seek direct relief from OEA.”⁷ Employee avers that he was denied due process in that he did not receive a pre-termination hearing which violates his “Loudermill and Weingarten” rights. Employee further maintains that his matter is subject to equitable tolling under OEA Rule 631.2, as the delay was a direct result of the Agency’s relocation, concealment actions and exhaustion of other avenues.

Employee also avers that there is a record of “systemic due process violations, intentional suppression of material evidence and fraudulent misrepresentation by representatives of the District Department of Transportation (DDOT) and associated union representation.”⁸ Employee asserts that on April 8, 2021, he sent an email to Dena Thweatt with the subject line of “work” and that this communication “explicitly notified her that [he] was on active Workers’ Compensation protective status.”⁹ Employee further avers that the Agency “fabricated an AWOL charge claiming [he] missed 53 days of work between December 7, 2020, and January 29, 2021, which is a “flat out legal impossibility.” Employee maintains that he was on “fully approved active Workers’ Compensation protective status through the District government.” Employee also avers that the Department of Human Resources (“DCHR”), coded his termination as “misconduct.” Employee further avers that he failed to receive fair representation by his Union Representative, Debra Walker.

Employee also asserts that the District is “attempting to enforce a strict, unyielding double standard before this Office.” He argues that they demand adherence to a calendar deadline but systematically failed to follow the applicable regulations. Employee asserts that he is filing a “federal-level criminal and civil violation packet into the record.” Employee claims that this packet will provide evidence of the fraudulent actions of the Agency.¹⁰

Agency’s Position

Agency asserts OEA lacks jurisdiction over this matter because Employee’s Petition for Appeal (“PFA”) was untimely filed. Agency avers that Employee’s PFA was filed “more than four years” between the Agency action and the date of the filing. Agency cites Employee was a Safety Technician at DDOT. Agency further notes that on February 3, 2021, it provided Employee with a “15 day advance written notice of its proposal to remove him from his position.”¹¹ Agency contends that following a review from a Hearing Officer, the Agency issued a final notice of separation on March 26, 2021.¹² Agency denies all of Employee’s claims regarding the 250 M Street address appearing on the final notice and the claims that it “actively concealed” Employee’s employment status.¹³ Further, Agency asserts that at issue is whether Employee timely filed the instant appeal to this Office.

⁷ *Id.*

⁸ Employee’s “Formal Rebuttal and Exclusion of Fraudulent Timeline. (May 20, 2026).)

⁹ *Id.*

¹⁰ Employee’s Formal Counter-Objection and Mandatory Notice of Evidence Injection Regarding Bad-Faith Administrative Timelines (June 2, 2026).

¹¹ Agency’s Reply to Employee’s Brief on Jurisdiction at Pages 1-2 (June 1, 2026).

¹² *Id.* at Page 2.

¹³ *Id.* at Page 3.

Agency maintains that pursuant to the March 26, 2021 Final Notice, Employee was separated from service effective April 2, 2021. Agency avers that “the latest possible date Employee had notice of his removal, was by Employee’s own admission, August 27, 2021.”¹⁴ This noted, Agency contends that while it does not concede that Employee did not have notice of his removal when he was served in March 2021, “even taking August 27, 2021, as the date when Employee knew of his removal, a total of one thousand six hundred and fifty-nine (1659), or four years, six (6) months, and fourteen (14) days elapsed between August 27, 2021, and March 13, 2026, the date when Employee filed the instant appeal.”¹⁵ Agency further avers that Employee has shown that there was a failure of service and offers no evidence to support that the “Agency’s address change had any impact on its ability to serve Employee with the documents related to his termination.”¹⁶ Agency reiterates Employee’s own admission of notice on August 27, 2021, but avers he still did not file until March 2026. Agency also maintains that Employee has provided no evidence of his “protected status” at the time of his removal, and it denies any claims that it “actively concealed his employment status.”¹⁷ Agency also asserts that Employee’s claims regarding his efforts with his union are not relevant to the issue of the filing of his appeal.

Agency maintains that it administered the termination action in accordance with all applicable laws, rules and regulations. Further, Agency asserts that Employee’s claims regarding “Loudermill/Weingarten” are unfounded. Agency asserts that in the Proposed Notice, “Agency advised Employee of his right [to] provide a response...”¹⁸ Agency avers that Employee never submitted a response, and the Hearing Officer review the relevant documents and “recommended that the proposed action be upheld.”¹⁹ Agency also argues that equitable tolling should not be applied here. Agency asserts that this Office has held that OEA Rule 604.2, “may be subject to equitable tolling because rules that govern timeliness submissions are claims processing, rather than jurisdictional rules.”²⁰ Agency contends that the “District of Columbia Court of Appeals has subsequently determined that equitable tolling is not available where claims processing rules are phrased in an unqualified manner.”²¹ Agency avers that “here, OEA Rule 604.2 is phrased in an qualified manner,” given that the rule cites that a Petition for Appeal “must” be filed within 30 days of the effective date of the action.²² As such, Agency asserts that Employee’s Petition for Appeal was not filed in a timely manner and must be dismissed for lack of jurisdiction.

Jurisdiction

This Office’s jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (“CMPA”), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of

¹⁴ *Id.* at Page 4.

¹⁵ *Id.* at Pages 4-5.

¹⁶ *Id.* at Page 5.

¹⁷ *Id.*

¹⁸ *Id.* at Page 6.

¹⁹ *Id.* at Page 6.

²⁰ *Id.* at Page 7. Citing to *Employee v. District Department of Transportation*, OEA Matter No. J-0042-26 (June 29, 2022). The undersigned would note the Agency has cited to the instant matter. It appears that Agency may otherwise be referring to *Employee v. DDOT*, OEA Matter No. 1601-0045-22, which was issued before this Office on June 29, 2022.

²¹ *Id.* citing to *Advisory Neighborhood Comm’n 2C v. D.C. Alcoholic Beverage & Cannabis BD*, 343 A.2d. 561, 572 (D.C. 2025).

²² *Id.*

1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1²³, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule § 631.2., 6-B DCMR Ch. 600 (December 27, 2021), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant rule 631.1, the burden of proof is by a preponderance of the evidence which is defined as “[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.” This Office has no authority to review issues beyond its jurisdiction.²⁴ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.²⁵

Filing of Petition for Appeal

Agency asserts that Employee’s Petition for Appeal should be dismissed because it was filed over four years after the effective date of termination. Employee does not dispute this late filing claim but cites to administrative errors for the reason for the delay. Employee’s termination was effective April 2, 2021, but Employee did not file his Petition for Appeal at OEA until March 13, 2026. OEA has held that a “[d]istrict government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within *thirty (30) calendar days of the effective date of the action being appealed.*”²⁶ (Emphasis added). The D.C. Court of Appeals in *Yordanos Sium v. Office of State Superintendent of Education*, 218 A.3d 228 (D.C. 2019)²⁷, held that the presumption regarding filing deadlines is that they are not jurisdictional, but waivable claims-processing rules. In support of this position, the Court relied heavily on the ruling in *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015) that filing deadlines in particular are quintessential claim-processing rules, which seek only to promote the orderly progress of litigation, and generally do not have jurisdictional force. (citing *Wong*, 135 S.Ct. at 1632 (quoting *Henderson*, 562 U.S. at 435, 131 S.Ct. 1197)). In *Sium*, the Court reasoned that even procedural rules codified in statutes are non-jurisdictional in character. It found that if a deadline is contained in a statute **and** its language is mandatory, it *may* be jurisdictional (Emphasis added). The Court held that D.C. Code § 1-606.03(a),

²³ See also. Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

²⁴ See. *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

²⁵ See. *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

²⁶ D.C. Code §1-606.03.

²⁷ See also. *Kevin Baldwin v DC Office of Employee Appeals and DC Department of Youth Rehabilitation Services*, DC Court of Appeals No. 18-CV-1134 (May 7, 2020).

which provides that any appeal shall be filed within 30 days of the effective date of the appealed action, meets both requirements. However, it opined that more is required.

Relying on *Mathis*, the D.C. Court of Appeals held that for a filing deadline to be deemed a jurisdictional bar, the traditional tools of statutory construction must also make clear that the legislature intended it to serve this purpose. The D.C. Court of Appeals saw no indication that the D.C. City Council affirmatively sought to curtail OEA's jurisdiction; therefore, it ruled that the 30-day deadline to file appeals at OEA is not jurisdictional. As a result, OEA cannot dismiss a late-filed appeal outright. However, OEA can dismiss the appeal if the Agency seasonably objects to the untimeliness of Employee's filing as a defense, as held in *Brewer v. D.C. Office of Employee Appeals*, 163 A.3d 799 (D.C. 2017).

In *Brewer*, the D.C. Court of Appeals held that as a claims-processing rule, a 30-day deadline is subject to equitable tolling. However, in accordance with the *Mathis* holding, claims-processing rules may be tolled (or relaxed or waived) if equity compels such a result (*See Neill v. District of Columbia Public Employee Relations Bd.*, 93 A.3d 229, 238 (D.C.2014), (explaining that claim-processing rules "may be relaxed or waived"). The Court in *Brewer* reasoned that equitable tolling turns on balancing the fairness to both parties and that equity aids the vigilant. Therefore, where a timing rule should be tolled turns on (1) whether there was unexplained or undue delay and (2) whether tolling would work an injustice to the other party (*See. Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392 (D.C.1991) and *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015)). (Emphasis added). Furthermore, the Court held that consideration of the importance of ultimate finality in legal proceedings can also be considered when making a determination on tolling a deadline.

In the instant matter, Employee cites that the reasons for his untimely filing were the Agency's failures to provide timely notice of the separation and that its action took place while he was on "Workers' Compensation protected status." To support this contention, Employee avers that the Agency used an address of 250 M Street, in the beginning of February 2021, but cites that the address was not active until later in February of that year. Employee also asserts that he did not receive the notice until August 2021 and that he attempted to engage in a grievance process. Employee further cites that he was on the Workers Compensation protected status until June 2022. As was previously cited, the Court noted in *Brewer* that considerations of equitable tolling for deadlines include a review of the explanation of the delay and whether the tolling would result in prejudice to the other party. Here, Employee filed his Petition five (5) years following the effective date of the action. Further, by Employee's own admission, instead of filing at OEA in August 2021 when he received notice, he instead tried to seek an "administrative resolution through his Union."

This tribunal has no jurisdiction over any claims of a failure of representation by an employee's union. Further, Agency seasonably objected to the untimeliness of Employee's filing as a defense, explaining that "equitable tolling" does not apply in this instance. Agency cites that while OEA Rule 604.2 may be subject to tolling considerations because of "rules that govern timeliness of submissions are claims processing rather than jurisdiction rules; the Court of Appeals has "subsequently determined that equitable tolling is not available when claims processing rules are phrased in an "unqualified manner."²⁸ In the instant matter, I find that Employee's claims are not subject to equitable tolling and that the filing of the Petition for Appeal nearly five years after the

²⁸ Agency's Reply to Employee's Brief on Jurisdiction at Page 7 (June 1, 2026).

effective date of the action is untimely. Even in consideration of Employee's admission of the receipt of notice on August 27, 2021, I find that the filing of the appeal on March 13, 2026, does not meet the "vigilance" standard prescribed by the Court in *Brewer* to warrant a consideration of equitable tolling. Accordingly, I further find that Employee's Petition for Appeal in this matter was not filed in accordance with the prescribed timeline required by all applicable laws, rules and regulations. As a result, this Office lacks jurisdiction over this matter. For the reasons cited above, I find that Employee has not met the burden of proof that OEA has jurisdiction over this matter and this matter must be dismissed.

ORDER

It is hereby **ORDERED** that the Petition for Appeal in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Michelle R. Harris

Michelle R. Harris, Esq.

Senior Administrative Judge