Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,[1]	)	
Employee	)	OEA Matter No. J-0107-26
	)	
v.	)	Date of Issuance: November 4, 2026
	)	
D.C. DEPARTMENT OF HUMAN SERVICES,	)	ChôNayse Sellers, Esq.
Agency.	)	Administrative Judge
	)	

Employee, *Pro se*
Folashade Bamikole, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 12, 2026, Employee filed a Petition for Appeal ("Petition") with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Human Services' ("DHS" or "Agency") June 24, 2026, decision to uphold her performance rating for her position as a Social Service Representative. OEA issued a Request for Agency's Answer to Employee's Petition for Appeal on August 12, 2026. On September 11, 2026, Agency filed its Answer. In its Answer, Agency asserted that OEA lacks jurisdiction over this matter as Employee's appeal was untimely and Employee has not been subject to termination. This matter was assigned to the undersigned on September 15, 2026.

On September 18, 2026, I issued an Order for Briefs on Jurisdiction requiring the parties to submit briefs addressing whether OEA has jurisdiction in this matter. Employee's brief was due on or before October 7, 2026, and Agency's brief was due on or before October 23, 2026. Employee did not submit a brief by the stated deadline. Consequently, on October 13, 2026, I issued an Order for Statement of Good Cause to Employee.[2] Employee was ordered to submit a

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] On October 13, 2026, Employee emailed the undersigned and requested an extension of time to submit her brief on jurisdiction as she was seeking clarification from her attorney on how to proceed. Employee never submitted a formal motion with a request for an extension. At the time of Employee's request, the undersigned had already issued an Order for Statement of Good Cause.

brief and a statement regarding her failure to submit the brief on jurisdiction by the October 7, 2026, deadline. Employee's brief and Statement of Good Cause were due by October 28, 2026. As of the date of this decision, Employee has not submitted a response as required. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

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

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 *id.* states:

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

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Analysis

Performance Evaluation Without Termination

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.[3] 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 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and the OPRAA conferred jurisdiction on this Office to hear

[3] *See Employee v. D.C. Fire & Medical Emergency Services,* OEA Matter No. 1601-0080-24 (September 24, 2024); *Employee v. Department of Public Works,* OEA Matter No. J-0076-25, *Opinion and Order on Petition for Review* (June 4, 2026).

appeals, with some exceptions of permanent employees in the Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period. According to the rules of this Office, established at 6-B DCMR § 604.1, OEA 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 ten (10) days or more; or
(c) A reduction-in-force; or
(d) A placement on enforced leave for ten (10) days or more.

In the instant matter, Employee is employed by DHS and received a 1.0 rating of Inadequate Performer for the rating period of fiscal year 2025. Employee appealed this rating to the Agency's internal Reconsideration and Resolution Committee ("RRC") on January 30, 2026. On June 24, 2026, the RCC issued its decision upholding the 1.0 rating. This performance rating did not result in Employee's termination.[4] In her Petition, Employee admits that she is "…a career service employee with the District of Columbia, employed by DHS".[5] The OEA Board has previously held that an employee's admission is sufficient to meet the Agency's burden of proof.[6] Therefore, I find that Employee has not been removed from service at DHS because of the fiscal year 2025 performance rating. I further find that the Agency's actions, as described in the Petition, are not related to an adverse action for cause that has resulted in removal, reduction in grade, or a suspension for ten (10) or more days; are not a reduction-in-force; and, are not considered placement on enforced leave for ten (10) days or more. Consequently, I conclude that OEA lacks jurisdiction over this matter.[7]

Timeliness

Agency asserts that Employee's Petition should be dismissed because it was filed over 30 days after the RRC's decision. Employee failed to provide any reason for the delay. 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*."[8] (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)[9], 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

[4] Petition at Exhibit 1(August 12, 2026); *see also* Agency Answer, p.5 (September 11, 2026).
[5] Petition at Exhibit 1.
[6] *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. J-0036-20 (February 3, 2022).
[7] Because I find that Employee was not separated from service as a result of her performance evaluation, I will not address the merits of her other claims.
[8] D.C. Code §1-606.03.
[9] *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).

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), 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 did not provide any explanation for her delay in filing the Petition more than 30 days after the RRC's decision on June 24, 2026. Therefore, I find that that the filing of the Petition was untimely. I further find the filing of the appeal on August 12, 2026, does not meet the "vigilance" standard prescribed by the Court in *Brewer* to warrant a consideration of equitable tolling. Accordingly, I conclude that Employee's Petition 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.

Failure to Prosecute

OEA Rule 624.3 states in relevant part that "if a party fails to take reasonable steps to prosecute of defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

(a) Appear at a scheduled proceeding after receiving notice;

(b) *Submit required documentation after being provided with a deadline for such submission*; or
(c) Inform this Office of a change of address which results in correspondence being returned."[10] (Emphasis added)

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.[11] In the instant matter, Employee was warned in both the September 18, 2026, and October 13, 2026, Orders that failure to comply could result in sanctions, including dismissal of her appeal. As of the date of this decision, Employee has not submitted a brief on jurisdiction or Statement of Good Cause for failing to submit her brief. Employee's responses were required to reach an informed decision in this matter. Accordingly, I find that Employee's failure to respond is a violation of OEA Rule 624 and presents another valid basis for dismissing this matter. For these reasons, I further find that this matter should be dismissed for Employee's failure to prosecute.

ORDER

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

FOR THE OFFICE:

/s/ ChôNayse Sellers
ChôNayse Sellers, Esq.
Administrative Judge

[10] OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).
[11] *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).