

² Agency's Answer to the Petition for Appeal, p. 1 (April 29, 2026).

On June 3, 2026, the undersigned issued an Order Regarding Employee's Motion for Extension, which granted Employee's Motion and also extended the deadline for Agency's brief to June 18, 2026. Agency submitted its brief on June 17, 2026.

After considering the parties' arguments as presented in their submissions to this Office, the undersigned has determined that an Evidentiary Hearing is not warranted. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

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

Employee's Position

Employee avers that she was terminated during her probationary period due to retaliation. In her Petition for Appeal, Employee asserts that, "I believe that I was terminated due to having a conversation [with my] boss's direct boss about things he was saying and doing."³ Employee further asserts that Agency "failed to follow mandatory statutory separation procedures under the District of Columbia Official Code" and "also ignored the explicit evaluation regulations within the District Personnel Manual ("DPM")."⁴ Employee thus maintains that her termination is procedurally defective.⁵

³ Employee's Petition for Appeal, p. 3 (March 31, 2026).

⁴ Employee's Brief on Jurisdiction, p. 1 (May 26, 2026).

⁵ *Id.*

Employee notes that on March 26, 2026, she was terminated effective the close of business that same day and “MPD provided fewer than 4 hours of total notice. MPD provided no advance written notice of the reasons for the effective date prior to that day.” Employee argues that “MPD failed to comply with the mandatory notice provisions of D.C. Code § 5-105.04” which Employee notes “governs the separation of probationary employees. The statute dictates that a probationer [employee] may only be separated after advance written notification. This notification must explicitly outline; 1. The specific reasons for the separation. 2. The exact effective date of the separation.”⁶ Employee also maintains that her termination violates DPM § 227.1 which she indicates requires that probationary separations for unsatisfactory performance be based on that failure and be executed properly. Employee also cites to DPM § 227.2, which she states requires written notice of the effective date of separation and DPM § 227.3, which she states permits up to ten (10) days of administrative leave but does not waive the requirement for advance written notice.⁷

Employee further asserts that “MPD cannot bypass civil service protections and progressive discipline.” Employee argues that by providing structured verbal counseling on March 23, 2026, Agency “initiated a corrective framework” and is “bound to the accompanying progressive discipline process.” Employee avers that because Agency “failed to utilize these mandatory corrective steps” that her termination is invalid.⁸

Agency’s Position

Agency asserts in its Answer that Employee was terminated during her probationary period on May 26, 2026, pursuant § 227 of the DPM.⁹ In its responsive Brief, Agency maintains that this appeal should be dismissed because Employee was still in a probationary period and thus her appeal lacks jurisdiction under 6-B § 227.4.¹⁰ Agency further asserts that Employee was recommended for termination because she did not demonstrate the required competencies necessary to successfully perform the duties of the Human Resources Specialists position “despite lead and supervisory guidance, feedback, and training.”¹¹ Agency asserts that Employee was six (6) months and eighteen days prior to the completion of her probationary period when Agency effectuated the termination.¹² Agency contends that this termination is not appealable because separation from government service during a probationary period is neither appealable nor grievable.¹³

Agency maintains that there is no dispute that Agency terminated Employee during her probationary period and notes that termination during probationary/ trial period “is listed as the nature of the action for her termination on her SF-50.”¹⁴ Agency further argues that Employee’s brief “incorrectly asserts that MPD violated D.C. Code §5-105.4 and Chapter 2, §227 of the District Personnel Manual, and incorrectly asserted that MPD is “bound to the accompanying Progressive Discipline process” but “failed to utilize these mandatory corrective steps.”¹⁵ Agency contends that

⁶ *Id.* at p. 2.

⁷ *Id.*

⁸ *Id.* at p. 3.

⁹ Agency’s Answer to the Petition for Appeal, p. 1 (April 29, 2026).

¹⁰ Agency’s Brief, p.1 (June 17, 2026).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at p. 3 (citing 6-B DCMR § 227.4).

¹⁴ *Id.* at p. 3.

¹⁵ *Id.*

D.C. Code § 5-105.4 does not apply to civilian employees like Employee, and further asserts that Agency has “complied with the plain language of chapter 2, §227 of the District Personnel Manual.” Agency maintains that Employee was notified of her separation in writing and that Agency had no mandatory obligation to provide Employee with advance written notice of her termination or place her on administrative leave prior to termination.¹⁶

Analysis

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.¹⁷ 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 appeals, with some exceptions. According to the rules of this Office, established at 6-B of the District of Columbia Municipal Regulation (“DCMR”) Chapter 600, Rule 604.1 states 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.

In the instant matter, the undersigned agrees with Agency’s assertion that OEA lacks jurisdiction over this matter. The record reflects that Employee was still in her probationary period at the time of termination.¹⁸ Chapter 2, § 227.4 of the District Personnel Manual (“DPM”) states that a termination during an employee’s probationary period is neither appealable nor grievable. Consistent with the DPM, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.¹⁹ Based on the record, the undersigned finds that Employee was hired on September 8, 2025, and terminated on March 26, 2026. Accordingly, I find that Employee was approximately six (6) months into her one-year (1) probationary period at the time of her termination.²⁰ Notably, ‘Termination During Probationary/Trial Period’ is listed as the nature of the action for termination on her SF-50.²¹ Further, in her Petition for Appeal, Employee also acknowledges that she was in a probationary period, and had worked at Agency for only six (6) months.²² Consequently, I find that this Office lacks jurisdiction over Employee’s appeal.

¹⁶ *Id.* at 4.

¹⁷ See, *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹⁸ Agency’s Brief, Exhibit 4. (June 17, 2026).

¹⁹ See e.g., *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011); *Employee v D.C. Department of Motor Vehicles*, J-0073-23 (February 2, 2024).

²⁰ Employee’s offer letter and final SF-50 submitted in Agency’s Brief, Exhibits 1 and 4 (June 17, 2026).

²¹ *Id.* at Exhibit 4.

²² Employee’s Petition for Appeal, pp. 1-2 (March 31, 2026).

The undersigned further finds that the requirements of D.C. Code § 5-105.4 apply to the sworn officers of the Metropolitan Police Department, and not to civilian employees.²³ The undersigned has also determined that Agency complied with the requirements outlined in § 227 of the DPM. Section 227.1 states: “Whenever a Career Service employee fails to perform his or her duties at a satisfactory level during the probationary period, probation shall be terminated and the employee shall be separated from government service. Section 227.2 states “When an employee is separated pursuant to § 227.1, the personnel authority shall notify the employee in writing of the effective date of the separation. Section 227.3 states the personnel authority *may provide* a probationary employee advanced written notice of his or her separation and may place the employee on administrative leave for up to ten (10) days prior to the effective date of the separation (emphasis added). Here, Employee was terminated for failing to perform her duties at a satisfactory level during her probationary period and was provided notice in writing.²⁴ While an agency has the discretion to place an employee on administrative leave, it is not obligated to do so, as noted above.

Further, Employee’s claim of retaliation does not meet the requirements for consideration. This Office has consistently held that to establish a retaliation claim, the party alleging retaliation must demonstrate that she (1) engaged in a protected activity by opposing employment practices that are unlawful under the District of Columbia Human Rights Act (“DCHRA”); (2) her employer took an adverse action against her; and (3) there existed a causal connection between the protected activity and the adverse personnel action.²⁵ Here Employee states that she believes that she was terminated as retaliation for talking to her supervisor’s supervisor, but does not suggest an unlawful employment practice. Further, Agency has provided a legitimate and lawful reason for its decision to terminate Employee. Thus, the evidence does not establish a *prima facie* case of retaliation.

Employee asserts several arguments concerning the merits of her appeal as outlined above; however, the undersigned finds that those arguments do not overcome Employee’s burden to establish jurisdiction by a preponderance of the evidence. Further, any argument that an employee in their probationary period can appeal a termination during a probationary period is not only in contradiction to § 227.4 of the DPM, but also the purpose of the probationary period, which is to evaluate an employee’s conduct and performance on the job to determine job readiness to meet the requirements of permanent employment status in the Career Service.²⁶ Accordingly, the undersigned finds that Employee’s probationary status at the time of termination precludes her from appealing her removal to this Office, as OEA lacks jurisdiction in this matter.

ORDER

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

FOR THE OFFICE:

/s/ Natiya Curtis
NATIYA CURTIS, Esq.
Administrative Judge

²³ Title 5 governs *Police*, firefighters, medical examiners, and forensic scientists (emphasis mine). Chapter 1, under which this D.C. Official Code section is found is titled ‘Metropolitan Police’.

²⁴ Agency’s Brief, Exhibits 3, 4. (June 17, 2026).

²⁵ See *Deidra Bell v District of Columbia Public Schools*, OEA Matter No. 2401-0048-23(March 26, 2024)

²⁶DCHR Issuance on Probationary Periods 1-2021-33 (2021).