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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹ ,	)	OEA Matter No. J-0054-25
	)	
v.	)	Date of Issuance: September 9, 2025
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, ESQ.
Agency	)	Senior Administrative Judge
	)	

Employee, *Pro Se*
Lynette Collins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 2, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate her from her position as a Library/Media Specialist, effective March 8, 2022. OEA issued a Request for Agency Answer to Petition for Appeal on July 2, 2025. Thereafter, on July 14, 2025, Agency filed its Motion to Dismiss stating that OEA lacked jurisdiction over this matter because Employee’s appeal with OEA was untimely, and that Employee filed a grievance with her Union on or about May 27, 2022, before filing her Petition for Appeal with this Office on July 2, 2025.

I was assigned this matter on July 18, 2025. I issued an Order on July 18, 2025, requiring Employee to address the jurisdictional issue raised by Agency in its Motion to Dismiss. Employee’s brief on jurisdiction was due by August 1, 2025, and Agency had the option to submit a response by August 15, 2025. While Employee timely filed her brief, Agency did not submit a response. Because I determined this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

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

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

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:

that 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.²

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 asserts in her Petition for Appeal that Agency’s adverse action violated her rights under the DCPS Employee Policy and the³ Collective Bargaining Agreement (“CBA”) between Agency and Employee’s Union. Employee also notes that Agency violated her due process rights, the *Douglas* factors, and that the action was discriminatory and retaliatory in nature.

Employee avers in her brief that she missed opportunities to file with OEA because she was given misleading information by Agency and the WTU. She notes that she has worked to mitigate the circumstances and made reasonable efforts to comply with OEA rules and deadlines. Employee cites that as she “discovered the detail of what went wrong with the choice of WTU leading and the Agency performing with WTU, she never realized that she was being given incorrect information and walking a path towards an unjust decision(s) in several D.C. Courts and that has caused a large delay of over 3 years.” Employee explains that the “long delays were not within the [E]mployee’s reasonable control and as a result of many delaying factors that the employee did not have reasonable control over...” Employee further asserts that as a result of the

² OEA Rule § 699.1.

³ Employee is a member of the Washington Teachers’ Union (“WTU”).

long delay, she appealed her case to OEA “... but she went to the wrong doors with the right information, only to find out that all three of her PERB actions were dismissed due to her not being a party to the case.”⁴ She highlights that the D.C. Superior Court “again told her that she lacked standing and was not a party to the case. Employee states that she did not realize that she was not a party and could not file a case without WTU and Agency’s approval before PERB. Employee requests that OEA allow her appeal “for excusable neglect, good cause and good faith for the untimely filing which is supported by strong evidence.”⁵

Employee cites to *Julia Washington v. D.C. Department of Forensic Sciences and D.C. Office of Employee Appeals*, stating that pursuant to Agency Review Rule 1(b)(2), a “deadline is subject to tolling for excusable neglect.” She notes that “the plain text of Agency Review Rule 1 allows tolling for excusable neglect because it incorporates DC Civil Rule 6(b)(1), which expressly provides for such relief. Employee also asserts that she involuntarily retired from Agency.”⁶

Agency’s Position

Agency states in its Motion to Dismiss that Employee’s appeal is untimely and must be dismissed. Agency explains that Employee was terminated effective March 8, 2022, and she filed her appeal with OEA on July 2, 2025, more than three (3) years beyond the thirty (30) days established for filing appeals with OEA. Agency avers that Employee was fully aware of the filing deadline as her termination notice included OEA appeal forms, OEA rules and OEA’s contact information.⁷

Additionally, Agency argues that Employee’s Union filed a grievance after her termination, prior to Employee filing the current adverse action. Agency highlights that D.C. Official Code § 1-616.52, limits employees to one method of appealing an adverse action. Agency avers that, pursuant to that D.C. Official Code § 1-616.52(f), the first appeal initiated by the employee will be the one to proceed. Agency explains that Employee’s union filed a grievance on her behalf on May 22, 2022, and this predates the current OEA appeal filed on July 2, 2025. Agency asserts that Employee’s termination notice notified Employee that she had two (2) appeal options, but mandated that Employee select one appeal option, not both. Agency cites that Employee chose the grievance route to challenge her termination before filing with OEA. Agency notes that since Employee has already grieved this adverse action, the current appeal before OEA is procedurally improper and as such, must be dismissed.⁸

Agency also asserts that OEA lacks jurisdiction over Employee’s alleged discrimination, disparate treatment and retaliation claims. Agency states that OEA is not the correct forum for

⁴ Public Employee Relation Board (“PERB”) is “an impartial, quasi-judicial, independent agency that resolves labor-management disputes between agencies of the District government and labor organizations representing agency employees.” Employee filed the following three (3) complaints with PERB: (1) Unfair Practices; (2) Arbitration Review and (3) Standard of Conduct Complain.

⁵ Employee’s Brief (August 1, 2025).

⁶ *Id.*

⁷ Agency’s Motion to Dismiss (July 14, 2025).

⁸ *Id.*

these claims and that these claims have been heard and are pending in other forums. Agency notes that Employee has a pending lawsuit against DCPS in District Court challenging her separation as well as the claims outlined above.⁹

*Analysis*¹⁰

The threshold issue in this matter is one of 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 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") § 604.1¹¹, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more (Emphasis added);
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

This Office has no authority to review issues beyond its jurisdiction.¹² Therefore, issues regarding jurisdiction may be raised at any time during the proceeding.¹³

Untimeliness

Agency asserts that Employee's Petition for Appeal should be dismissed as untimely because she filed her appeal with OEA more than thirty (30) days from the effective date of her termination. 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.*"¹⁴ (Emphasis added). Here, Employee was terminated effective March 8, 2022, and she filed her Petition for Appeal with OEA on July 2, 2025. I find that March 8, 2022, to July 2, 2025, is more than thirty (30) days. However, the D.C. Court of

⁹ *Id.*

¹⁰ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

¹¹ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

¹² See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

¹³ 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).

¹⁴ DC Official Code §1-606.03.

Appeals in *Yolanda Sium v. Office of State Superintendent of Education*, 218 A.3d 228 (D.C. 2019), 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), 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)). 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 filed her Petition for Appeal with OEA more than three (3) years from the effective date of her termination. While Agency objects to the untimeliness of Employee's filing as a defense, Employee argues that the filing deadline was tolled because the "long delays were not within the [E]mployee's reasonable control and as a result of many delaying factors that the employee did not have reasonable control over..." The D.C. Court of Appeals in *Brewer* opined 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..."

Here, there is no dispute that Employee waited over three (3) years to file her appeal with OEA. While Employee attempts to argue that the reason for the delay was a result of misleading

information by Agency and the WTU, I find otherwise. First, Employee did not specify the misleading information that caused the delay. Further, Employee's termination letter included OEA's Appeal forms, OEA rules and OEA contact information. Upon further review of Employee's termination notice, it appears that Agency provided Employee with OEA's former address, located at 1100 4th Street, SW, Ste. 620E, Washington, DC 20024.¹⁵ Employee argues that as a result of the long delay, she appealed her case to OEA "... but she went to the wrong doors with the right information, only to find out that all three of her PERB actions were dismissed due to her not being a party to the case." I do not find this argument convincing. If Employee had gone to this location looking to file a Petition for Appeal with OEA, the PERB staff who received Employee's appeal forms on all three (3) occasions would have notified Employee she was filing with the wrong office. Moreover, the OEA Appeal form has OEA's correct address. Therefore, I find Agency's failure to list the correct address for OEA on the Notice of Termination to constitute harmless error.¹⁶

Additionally, I find that tolling the deadline would work an injustice on Agency because during this delay, Employee filed claims in several other forums for the same matter. I find that had Employee been successful in these other forums, she would not have filed the current appeal with OEA. Consequently, relying on *Brewer and Mathis*, I conclude that allowing Employee to file the current appeal with OEA after the thirty (30) days deadline and after about three (3) years of Agency defending this same adverse action in several different forums would work an injustice on Agency. As such, I find that Employee's Petition must be dismissed for being untimely.

Selection of Forum

Agency also argues that OEA lacks jurisdiction over this appeal because Employee's Union filed a grievance after her termination, and prior to Employee filing the current adverse action. Employee does not dispute this assertion. Employee asserts that she is a member of the WTU and that she has filed multiple appeals in several forums regarding her termination. According to the record, the WTU filed a 'Step 2' grievance on Employee's behalf on May 27, 2022, pursuant to the Collective Bargaining Agreement ("CBA") between Employee's Union and DCPS, disputing her termination.¹⁷

D.C. Official Code (2001) §1-616.52 reads in pertinent part as follows:

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the

¹⁵ See Agency's Motion to Dismiss, *supra*, at TAB 1. It should be noted that OEA moved from this location years before Employee was terminated. It should also be noted that OEA previously shared this suite with PERB, and PERB remained at this location after OEA moved to its current location at L'Enfant Plaza.

¹⁶ OEA Rule 631.3 provides that: "[n]otwithstanding any other provisions of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take action."

¹⁷ See Agency's Motion to Dismiss, *supra*, at TAB 2.

procedures of this subchapter [providing appeal rights to OEA] for employees in a bargaining unit represented by a labor organization.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to Section 1-606.03, or the negotiated grievance procedure, **but not both**. (Emphasis added).

(f) An employee shall be deemed to have exercised their option (*sic*) pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, **whichever occurs first** (emphasis added).

Additionally, the February 14, 2022, Notice of Termination informed Employee that she could appeal her termination with either OEA or through her Union, but not both.¹⁸ According to the record, Employee was a member of WTU. Employee's termination was effective on March 8, 2022. On May 27, 2022, Employee's Union filed a 'Step 2' grievance disputing her termination. Subsequently, more than three (3) years later, on July 2, 2025, Employee filed a Petition for Appeal with OEA. Pursuant to the above-mentioned code, Employee had the option to appeal her termination with either OEA or through her Union, **but not both**. (Emphasis added). By electing to appeal her termination by filing a grievance under the CBA between Agency several years before she filed her Petition for Appeal with OEA, I find that Employee waived her rights to be heard by this Office. Therefore, I conclude that this Office does not have jurisdiction over Employee's appeal.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 631.1, *id*, as 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." Based on the foregoing, I conclude that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and Agency's Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge

¹⁸ See Agency's Motion to Dismiss, *supra*, at TAB 1.