

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 Chief Operating Officer 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	)	OEA Matter No. J-0059-26
	)	
v.	)	Date of Issuance: July 27, 2026
	)	
D.C. DEPARTMENT OF HEALTH,	)	
Agency	)	MONICA DOHNJI, Esq.
	)	Senior Administrative Judge
	)	
Employee, <i>Pro Se</i>		
Lawrence Corbeille, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 17, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Department of Health’s (“DOH” or “Agency”) rescission of a contingent employment offer due to “being labeled as MSI despite appealing the grade.” OEA issued a Request for Agency Answer to Petition for Appeal on April 20, 2026. Thereafter, on May 18, 2026, Agency filed its Answer to Petition for Appeal and Motion to Dismiss. Agency stated therein that OEA does not have jurisdiction over the rescission of a contingent job offer as this is not a removal, reduction in grade, suspension, reduction in force or enforced leave. Agency further cited that the contingent job offer was rescinded by D.C. Office of the State Superintendent of Education (“OSSE”) and not by DOH. Agency further asserted that OEA lacks jurisdiction over performance evaluations that do not result in termination. As such, Agency argued that its Motion to Dismiss be granted and Employee’s Petition for Appeal be dismissed due to Employee’s failure to establish OEA’s jurisdiction over this matter.

This matter was assigned to the undersigned Senior Administrative Judge on May 19, 2026. Subsequently, the undersigned issued an Order on May 26, 2026, requiring Employee to address the jurisdiction issue raised by Agency in its May 18, 2026, submissions. Employee’s brief on jurisdiction was due on or before June 12, 2026, and Agency had the option to file a

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

reply brief on or before June 26, 2026. While Employee filed her brief as required as of the date of this decision, Agency has not submitted a sur-reply brief. Because I have determined this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

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:

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.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.

ANALYSIS AND CONCLUSIONS OF LAW³

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-

² OEA Rule § 699.1.

³ 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”).

B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1⁴, 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;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

Moreover, DPM § 631.2 provides that “. . . for appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction.”

This Office has no authority to review issues beyond its jurisdiction.⁵ In the instant matter, Employee was employed by DOH and Employee received a 2.0 rating of Marginal Performer for the rating period of October 1, 2024, to September 30, 2025. Employee appealed this rating to Agency’s internal Reconsideration and Resolution Committee (“RCC”) on January 7, 2026. The RCC issued its decision on May 1, 2026, and despite an update to Employee’s performance rating sheet, the changes were insufficient to increase her overall performance rating above a 2.0 rating. Employee filed a Petition for Appeal with OEA on April 17, 2026, while her appeal was pending before the RCC contesting the rescission of a contingent employment offer due to “being labeled as MSI despite appealing the grade.”

Employee argues in her Brief on Jurisdiction that Agency issued her a Notice of termination on June 1, 2026, with an effective date of June 22, 2026, therefore, Agency cannot “simultaneously argue to this Office that no termination resulted from the performance evaluation while issuing a termination notice predicated on the very same evaluation and its downstream consequences.”⁶ Employee also asserts that Agency’s June 1, 2026, Notice of Termination is procedurally defective as it did not comply with District Personnel Manual (“DPM”) section 209.12. Employee avers that the performance evaluation resulted in termination, as such, OEA has jurisdiction over her Petition for Appeal.⁷

Based on Employee’s April 17, 2026, Petition for Appeal, Employee was appealing the rescission of a contingent employment offer due to “being labeled as MSI despite appealing the grade.” At the time Employee filed the instant appeal, Agency had not terminated Employee or issued a notice of termination to Employee. Based on Employee’s own admission, Agency issued its notice of termination to Employee on June 1, 2026, approximately two (2) months after Employee filed the instant appeal with OEA. Consequently, the undersigned finds that the appeal before OEA in this matter is that of Agency’s rescission of a contingent employment offer due to

⁴ See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

⁵ 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).

⁶ Petitioner’s Brief on Jurisdiction (June 11, 2026).

⁷ *Id.*

“being labeled as MSI despite appealing the grade” and not based on Employee’s subsequent termination from Agency. The undersigned further finds that Agency’s action as described by Employee in her April 17, 2026, Petition for Appeal is not related to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. Pursuant to 6-B DCMR § 604.1, an agency’s rescission of a contingent employment offer due to “being labeled as MSI despite appealing the grade” falls outside of OEA’s purview. Moreover, the contingent job offer was rescinded by another agency – OSSE, and not by DOH. Consequently, I find that this Office does not have jurisdiction over this matter.

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 has not met 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 Agency’s Motion to Dismiss is **GRANTED** and the Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Monica N. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge