

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)	
)	OEA Matter No. J-0084-24
v.)	
)	Date of Issuance: August 7, 2025
D.C. DEPARTMENT OF MOTOR)	
VEHICLES,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Hearing Examiner with the D.C. Department of Motor Vehicles (“Agency”). On July 26, 2024, Agency issued a notice of termination to Employee. The notice provided that it would end Employee’s employment during his probationary period.² On August 30, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). It was Employee’s position that he was a permanent employee. As a result, he requested that he be reinstated and reimbursed for his salary.³

On October 3, 2024, Agency filed its Answer to Employee’s Petition for Appeal. It asserted that Employee worked for the District government from 1986 through 2000. Agency explained

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

² *Petition for Appeal*, p. 6 (August 30, 2024).

³ *Id.* at 2.

that he was not hired as a Hearing Examiner until January of 2024. It contended that pursuant to District of Columbia Municipal Regulations (“DCMR”) § 226.1, if an employee has a break in service of more than three days, then they are required to complete a new probationary period. Moreover, it provided that the offer letter for the Hearing Examiner position clearly advised Employee that he would be a “Probational Career Appointment.” Thus, according to Agency, Employee was still in a probationary status at the time of his termination.⁴

The OEA Administrative Judge (“AJ”) issued an Order Requesting Briefs on Jurisdiction.⁵ Employee’s brief provided that he was a Career Service permanent employee entitled to the protections of D.C. Personnel Regulations (“DPR”), Chapter 16. He opined that he accrued fifteen years of permanent employment with the District government and should be reinstated without having to serve another probationary period. Employee further explained that probationary periods were intended for those new to the Career Service designation or for those who entered into a new appointment that is incompatible with their prior service.⁶

Agency filed its Brief on Jurisdiction on December 17, 2024. It maintained its argument that Employee had a break in service for longer than three days, and as a result, he was required to serve a probationary period when he returned to District government employment.⁷ Agency asserted that Employee was serving a probationary period at the time of his removal. Accordingly, it contended that OEA lacked jurisdiction to consider his removal and that requested that Employee’s appeal be dismissed.⁸

⁴ *Answer to Petition on Behalf of the Department of Motor Vehicles*, p. 1-4 (October 3, 2024).

⁵ *Post Pre-hearing Conference Order/Order for Briefs on Jurisdiction* (October 29, 2024).

⁶ *Employee’s Brief on Jurisdiction* (November 26, 2024).

⁷ It was Agency’s position that Employee worked as a Career Service employee with the District government until October of 2000. It provided that Employee then went to work with D.C. Water, which it alleged is a quasi-governmental organization, from January 2002 to July 2022. Finally, Employee was hired with Agency on January 29, 2024.

⁸ *Agency’s Brief on Jurisdiction*, p. 1-9 (December 17, 2024).

In the Initial Decision, the AJ found that the principal issue in this matter was OEA's jurisdiction to consider the appeal. According to the AJ, Agency provided a Standard Form 50 which noted that Employee's position was subject to a one-year probationary term. She also found that OEA has held that pursuant to DPM § 227.4, removals during an employee's probationary period are neither appealable nor grievable. Finally, the AJ reasoned that even if OEA had jurisdiction over D.C. Water Career Service matters, Employee still had a break in service longer than three (3) days because he left his position at D.C. Water in 2022 and started with Agency in 2024. Consequently, she dismissed Employee's Petition for Appeal for lack of jurisdiction.⁹

Employee disagreed with the AJ's ruling and filed a Petition for Review with the OEA Board on March 21, 2025. He contends that employees who are reinstated to Career Service positions after previously achieving tenure, are not required to serve a new probationary period unless there is a fundamentally new appointment, which he claims did not occur here. He also asserts that he received no notification that he would be considered a probationary employee. Consequently, he requests that the Board reverse the Initial Decision and allow the matter to be decided on the merits of the case.¹⁰

As the AJ held, OEA Rule 631.2 provides that “. . . the employee shall have the burden of proof as to issues of jurisdiction. . . .” It is Employee's position that he is a Career Service permanent employee who accrued fifteen years of permanent employment with the District government and should not have to serve another probationary period.¹¹ However, Agency asserts that Employee worked for the District government from 1986 through 2000, and he was not hired as a Hearing Examiner until January 2024. It contends that in accordance with DCMR § 226.1,

⁹ *Initial Decision*, p. 6-7 (February 13, 2025).

¹⁰ *Employee's Petition for Review of Initial Decision* (March 21, 2025).

¹¹ *Employee's Brief on Jurisdiction* (November 26, 2024).

Employee was required to complete a new probationary period because he had a break in District government service of more than three days.¹²

Section 6-B DCMR 226.1 provides that “[e]xcept when the appointment is affected with a break in service of three (3) days or more, . . . an employee who once satisfactorily completed a probationary period in the Career Service shall not be required to serve another probationary period.” Agency explains, and Employee does not dispute, that he worked with the District government from sometime in the 1980s until October of 2000. According to Agency, and consistent with Employee’s resume, he went to work with D.C. Water from January 2002 to July 2022.¹³ Employee was hired by Agency on January 29, 2024. From July 2022 until January 29, 2024, is approximately one year and six months. As the AJ ruled, this is beyond a three-day break in service. Therefore, Employee was required to serve a new probationary period.

Moreover, Employee argues that he received no notification that he would be considered a probationary employee. However, pursuant to Agency’s January 11, 2024, offer letter, Employee was required to “satisfactorily complete a one-year probationary period beginning on January 29, 2024. The offer letter was signed by Employee on January 12, 2024.”¹⁴ Therefore, despite his contention, Employee was notified of his probationary status.

Because Employee’s probationary period started on January 29, 2024, his probationary period would not have ended until January of 2025. However, Employee was removed from his position on August 9, 2024.¹⁵ As a result, he did not complete his one-year probationary period.

¹² *Agency’s Brief on Jurisdiction* (December 17, 2024).

¹³ *Id.* and *Answer to Petition on Behalf of the Department of Motor Vehicles*, Tab #1 (October 3, 2024).

¹⁴ *Petition for Appeal*, p. 6 (August 30, 2024) and *Agency’s Brief on Jurisdiction*, p. 11-14 (December 17, 2024).

¹⁵ *Petition for Appeal*, p. 6 (August 30, 2024).

As repeatedly held by this office, OEA lacks jurisdiction to consider appeals of probationary employees.¹⁶ Consequently, we must deny Employee's Petition for Review.

¹⁶ *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0027-21 (November 15, 2021); *Employee v. D.C. Department of Corrections*, OEA Matter No. J-0013-23 (January 25, 2023); *Employee v. D.C. Department of Motor Vehicles*, OEA Matter No. J-0073-23 (February 2, 2024); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0075-24 (November 1, 2024); and *Employee v. District of Columbia Department of Housing and Community Development*, OEA Matter No. J-0004-25 (March 24, 2025).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Dionna Maria Lewis, Chair

Arrington L. Dixon

Lashon Adams

Jeanne Moorehead

Pia Winston

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.