

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-0076-25
v.	)	
	)	Date of Issuance: June 4, 2026
DEPARTMENT OF	)	
PUBLIC WORKS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Sanitation Supervisor with the Solid Waste Management Division of the Department of Public Works (“Agency”). On July 10, 2025, Agency served Employee with an Advance Written Notice of Proposed Five-Day Suspension charging her with Conduct Prejudicial to the District Government. The charge stemmed from a February 27, 2025, incident wherein Employee was accused of engaging in unprofessional conduct with a representative from the Office of Risk Management. Agency issued its Notice of Final Decision on September 2, 2025. Employee was suspended effective September 3, 2025, through September 9, 2025.²

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

² *Agency’s Answer to Petition for Appeal* (October 3, 2025).

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 2, 2025. She argued that the allegations of misconduct were false; Agency never conducted an investigation or interviewed her concerning the February 27, 2025, incident; and Agency’s proposed notice was untimely. As a result, Employee asked that OEA reverse the five-day suspension and reimburse her for lost pay.³

Agency filed a response to Employee’s appeal on October 3, 2025. It contended that OEA lacked jurisdiction over this appeal pursuant to D.C. Code § 1-606.03(a) because Employee’s suspension was less than ten days. Alternatively, Agency asserted that if OEA exercised jurisdiction over Employee’s suspension, the proposed noticed complied with Chapter 6-B, Section 1602.3(a) of the D.C. Municipal Regulations (“DCMR”). Additionally, it maintained that all relevant *Douglas* factors⁴ were considered when selecting the imposed penalty. Therefore, Agency opined that the suspension action complied with all applicable laws, rules, and regulations.⁵

On October 6, 2025, the OEA Administrative Judge (“AJ”) issued an order directing Employee to submit a brief addressing the issue of jurisdiction on or before October 16, 2026. The

³ *Petition for Appeal* (September 2, 2025).

⁴ The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board (“MSPB”) in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters: 1) the nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; 2) the employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; 3) the employee’s past disciplinary record; 4) the employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; 5) the effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisors’ confidence in employee’s ability to perform assigned duties; 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses. 7) consistency of the penalty with any applicable agency table of penalties; 8) the notoriety of the offense or its impact upon the reputation of the agency; 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; 10) potential for the employee’s rehabilitation; 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and 12) the adequacy and effectiveness of alternative sanctions to deter such conduct.

⁵ *Agency’s Answer to Petition for Appeal*, p. 6 (October 3, 2025).

order informed Employee that her failure to provide a response by the prescribed deadline may result in the imposition of sanctions under OEA Rule 624.3.⁶ The AJ subsequently issued a second order on October 15, 2025, requesting that Employee submit a jurisdictional brief on or before October 27, 2025.⁷ On November 6, 2025, Employee requested and was granted a two-week extension to file a response while she sought legal representation.⁸ When she failed to submit a response by the requested deadline, the AJ issued an Order for Statement of Good Cause on January 23, 2026.⁹ The order provided that Employee's failure to submit a timely response could result in the imposition of sanctions under OEA Rule 624.3. Employee did not submit a response to the AJ's directive.

The AJ issued an Initial Decision on February 9, 2026. He held that OEA did not have jurisdiction to adjudicate Employee's appeal because it was well-settled that this Office lacks jurisdiction over suspensions of less than ten days. Since there was no dispute that Employee only served a five-day suspension, the AJ concluded that the matter was required to be dismissed. As an alternate basis for dismissing the appeal, the AJ ruled that Employee's failure to submit a response to the January 23, 2026, Order for Statement of Good Cause violated OEA Rule 624.3. He reasoned that Employee was informed that her failure to submit a brief on jurisdiction in a timely manner could result in the imposition of sanctions, including dismissal. Thus, he concluded that Employee failed to exercise the diligence expected of an appellant pursuing an appeal before this Office. Consequently, her appeal was also dismissed for failure to prosecute.¹⁰

⁶ *Order for Briefs on Jurisdiction* (October 6, 2025). The order was returned to OEA by the U.S. Postal Service as "Return to Sender; Unable to Forward."

⁷ *Order for Briefs on Jurisdiction* (October 15, 2025). The order was also returned to OEA by the U.S. Postal Service as "Return to Sender; Unable to Forward."

⁸ *Employee's Request for Additional Time to File Brief* (November 6, 2025). Employee's request was granted by the AJ.

⁹ *Order for Statement of Good Cause* (January 23, 2026).

¹⁰ *Initial Decision* (February 9, 2026).

Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on March 3, 2026. She argues that she missed the deadline for submitting a response to the cause order due to circumstances beyond her control. Employee asserts that she was scammed by an attorney who inaccurately represented that he would submit a brief on her behalf. As a result, she asks that the five-day suspension be reversed or that the Board remand the matter to the AJ for adjudication.¹¹

In response, Agency opines that the AJ properly dismissed Employee's appeal for lack of jurisdiction because pursuant to 6-B DCMR § 604.1(d), employees serving a suspension of less than ten days have no right to appeal the adverse action to OEA. Additionally, it maintains that the AJ correctly dismissed the matter because Employee failed to prosecute her appeal. Therefore, it requests that the Board deny her petition.¹²

Discussion

The threshold issue before this Board 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. 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 Chapter 6-B, Section 604.1 of the District of Columbia Municipal Regulations ("DCMR"), this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting the following:

- (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*);

¹¹ *Petition for Review* (March 3, 2026).

¹² *Answer to Petition for Review* (April 7, 2026).

- (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.¹³ Additionally, OEA has consistently held that it lacks jurisdiction over suspensions of less than ten days.¹⁴ In this case, Employee does not dispute that she was suspended for less than ten days. Agency's September 2, 2025, Notice of Final Decision imposed a five-day suspension upon Employee from September 3, 2025, to September 9, 2025. Accordingly, this adverse action fails to satisfy the jurisdictional threshold required under 6-B DCMR § 604.1. Because Employee's suspension was less than ten days, the AJ properly dismissed her appeal for lack of jurisdiction, and this Office is precluded from adjudicating the merits of her appeal. Accordingly, we find that the Initial Decision is based on substantial evidence.¹⁵ As a result, Employee's Petition for Review must be dismissed.¹⁶

¹³ See *Employee v. D.C. Fire & Medical Emergency Services*, OEA Matter No. 1601-0080-24 (September 24, 2024).

¹⁴ *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993). Also see *Burton v. D.C. Fire & Emergency Services Department*, OEA Matter No. 1601-0156-09 (November 7, 2011); *Jordan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0003-06, *Opinion and Order on Petition for Review* (July 24, 2008); *Employee v. D.C. Fire & Medical Emergency Services*, OEA Matter No. 1601-0080-24 (September 24, 2024); *Employee v. D.C. Fire & Medical Emergency Services*, OEA Matter No. 1601-0059-23 (October 16, 2023); *Employee v. Department of Corrections*, OEA Matter No. 1601-0045-21 (March 15, 2022); *Employee v. D.C. Fire & Medical Emergency Services*, OEA Matter No. 1601-0031-21 (December 8, 2021); *Employee v. Office of the Chief Financial Officer*, OEA Matter No. J-0025-20; and *Lehan v. D.C. Fire & Medical Emergency Services*, OEA Matter No. J-0166-12, *Opinion and Order on Petition for Review* (March 4, 2014).

¹⁵ The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), held that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. See *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

¹⁶ This Board will not address the Initial Decision's ruling on Employee's failure to prosecute because this Office is jurisdictionally barred from adjudicating her appeal.

ORDER

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

FOR THE BOARD:

Pia Winston, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

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.