THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE[1]	
v.	OEA Matter No.: 1601-0036-19C23
DEPARTMENT OF YOUTH REHABILITATION SERVICES, Agency	Date of Issuance: November 6, 2025

OPINION AND ORDER ON
MOTION FOR INTERLOCUTORY APPEAL

Employee worked as a Youth Development Representative ("YDR") with the Department of Youth Rehabilitation Services ("Agency"). On September 10, 2018, Agency issued a Notification of Charge of Absence Without Official Leave ("AWOL"), notifying Employee that she was placed in AWOL status for a total of forty hours between August 20, 2018, and August 26, 2018. On November 29, 2018, Agency issued an Advance Written Notice of Proposed Removal, charging Employee with 1) inability to carry out assigned responsibilities or duties and 2) attendance-related offenses.[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 Motion to Dismiss and Answer to Employee's Petition for Appeal* (April 1, 2019).

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on February 28, 2019. Agency filed a Motion to Dismiss and Answer to Employee's Petition for Appeal on April 1, 2019. The OEA Administrative Judge ("AJ") issued an Initial Decision on February 3, 2022. Concerning the penalty, the AJ provided that both the proposing and deciding officials only referred to the attendance-related offenses to support Agency's selection of the penalty. Since this charge was reversed, she remanded the matter to Agency to determine what penalty, if any, was appropriate based on the remaining charge of inability to carry out assigned duties.[3]

Agency filed a Petition for Review with the OEA Board on March 10, 2022. The Board issued an Opinion and Order on Petition for Review on June 30, 2022. It ruled that the AJ's decision to remand the matter to Agency for reconsideration of the penalty was based on substantial evidence. Therefore, Agency's Petition for Review was denied, and the matter was remanded to Agency to reconsider the imposed penalty.[4]

According to Agency, during a November 2, 2022, Fitness for Duty Examination, Employee was evaluated by Dr. Karen Singleton, who determined that Employee was not capable of performing the essential functions of the YDR position. Dr. Singleton further concluded that there were no accommodations that would permit Employee to safely perform her duties. Agency's Human Resources Director then conducted a review of Employee's resume in concert with all vacancies but determined that there were no positions for which Employee was qualified at her

[3] *Id*.
[4] *Opinion and Order on Petition for Review* (June 30, 2022). An amended Opinion and Order on Petition for Review was issued on August 25, 2022, after Agency filed a Motion for Clarification on August 2, 2022. The amended order was issued to reflect that the Petition for Review was granted in part and denied in part.

listed grade level. As a result, Agency issued a Final Agency Decision: Removal to Employee on May 4, 2023, because it opined that termination was the only reasonable penalty.[5]

Employee filed a second Petition for Appeal in relation to this matter on June 5, 2023. Agency filed its answer on June 30, 2023. During an August 18, 2023, prehearing conference, the AJ gleaned that Employee's June 5th filing constituted a challenge to Agency's compliance with the Board's order remanding the matter for reconsideration of the penalty.[6] Agency was subsequently ordered to submit a statement of compliance to the AJ no later than March 22, 2024.[7] In response, Agency asserted that in the absence of any option to retain Employee, it proposed her removal was consistent with 6-B DCMR §§ 1605.4(n) and 1607.2(n) because it was determined that Employee could not perform the essential functions of her job. Employee filed a rebuttal to Agency's compliance statement on June 10, 2024. Agency was then ordered to supplement the record with additional documentation pertinent to Employee's ankle fracture so that the AJ could determine if Agency properly considered the injury during the fitness evaluation.[8]

On January 29, 2025, the AJ issued a *sua sponte* order requesting further information from Employee's evaluating physicians, including their resumes, medical qualifications, physical examination results, and other medical opinions.[9] Agency requested reconsideration of the AJ's order on February 18, 2025, citing issues of confidentiality and the lack of expert witness qualification. The AJ denied the motion in a February 24, 2025, order, and Agency was again directed to submit the documentation identified in the previous order.[10] On March 4, 2025, Agency

[5] *Agency's Answer to Petition for Appeal* (June 30, 2023).
[6] *Prehearing Conference Order* (August 1, 2023) and *Post-Prehearing Conference Order* (October 4, 2023). *See also Agency's Praecipe Regarding Jurisdiction* (December 23, 2023) (concurring with the AJ's assessment that the second appeal constituted a compliance matter rather than a new petition for appeal).
[7] *Order for Compliance* (February 15, 2024).
[8] *Order* (September 9, 2024).
[9] *Order* (January 29, 2025).
[10] *Order Deny Agency's Motion for Reconsideration* (February 24, 2025).

filed a Motion for Certification of Interlocutory Appeal and Request for Stay of Proceedings contesting the AJ's February 24th order. The AJ stayed the proceedings on March 10, 2023, but did not certify the matter to the Board.

On June 17, 2025, AJ Lim issued an order informing the parties that the matter was reassigned to him after AJ Hochhauser, who was previously assigned to this matter, left the employ of OEA. The order directed the parties to provide electronic copies of all relevant documents pertaining to the matter including the "[Initial Decision], Opinion & Order, Motion for Compliance, Motion for Interlocutory Appeal, etc." He clarified that the "purpose of which is to discuss this matter so that I can determine the best path forward with regards to this appeal."[11]

During a July 7, 2025, status conference, the parties discussed Employee's request for leave to file a motion for summary judgment, AJ Hochhauser's January 29th and February 24th orders, and Agency's motion to certify an interlocutory appeal of the order to the OEA Board. The AJ informed the parties of his intention to revoke AJ Hocchauser's orders, and Agency provided that it would submit a formal request to withdraw its request for certification. The July 7, 2025, Order revoked AJ Hochhauser's January 29, 2025, order, and Employee was also directed to submit her motion for summary judgment no later than July 18, 2025. [12]

Agency submitted a written notice to withdraw its request to certify an interlocutory appeal on July 10, 2025. On July 14, 2025, the AJ accepted Agency's withdrawal and revoked the February 24th order.[13] Employee filed a Motion for Summary Judgment on August 14, 2025, and Agency filed its response on August 29, 2025.[14]

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[11] *Order on Reassignment and for Documents* (June 17, 2025).
[12] *Post-Conference Order* (July 7, 2025).
[13] *Order* (July 14, 2025). The AJ erroneously stated that Employee, and not Agency, submitted the request.
[14] *Employee's Motion for Summary Judgment* (August 14, 2025) and *Agency's Response to Employee's Motion for Summary Judgment* (August 29, 2025).

On September 3, 2025, Employee filed an Affidavit in Support of Motion to Recuse the Reassigned Administrative Judge. In response, Agency filed an opposition to Employee's recusal motion on September 10, 2025. The AJ issued an Order on Recusal on September 16, 2025, denying Employee's motion.[15] On September 23, 2025, Employee filed an interlocutory appeal of the AJ's denial of the Motion for Recusal with the OEA Board. She argues that the AJ (1) failed to impose sanctions for *ex parte* communications by Agency; (2) exhibited bias against Employee at the July 7, 2025, status conference; and (3) displayed bias or prejudice by revoking orders originally issued by AJ Hochhauser.[16] Thereafter, the AJ issued an order certifying Employee's appeal to the OEA Board, noting that while it was not titled as such, this Office would treat her filing as a Motion for Certification of Interlocutory Appeal.[17] The issue before this Board is whether the AJ should be disqualified from adjudicating this matter.

Interlocutory Appeal

Under OEA Rule 699.1, an interlocutory appeal is defined as "an appeal to the Board of a ruling made by an Administrative Judge during the course of a proceeding." Pursuant to OEA Rule 619.1, the Administrative Judge may permit this appeal if he or she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate consideration. If certification is granted by the AJ, the record will be referred to the Board, and the Board shall make a decision on the issue. The Administrative Judge shall proceed in accordance with the Board's decision.[18]As a result of the order certifying this matter to the Board, we will consider the issues raised in Employee's motion.

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[15] *Order on Employee's Motion for Recusal* (September 16, 2025).
[16] On October 6, 2025, Employee filed an untitled document containing multiple exhibits in support of her Motion for Recusal. Many of these documents have already been received as part of the record. *Employee Filing* (October 6, 2025).
[17] *Order on Employee's Motion for Certification of Interlocutory Appeal to the OEA Board and Order Staying Proceedings* (September 30, 2025).
[18] OEA Rule 619.4.

Disqualification

Employee requests that AJ Lim recuse himself because he exhibited bias at the July 7, 2025, status conference and demonstrated impartiality, prejudice, and a conflict of interest by revoking AJ Hochhauser's January 29th and February 24th orders. OEA Rule 623.2 provides the following as it relates to the disqualification of OEA AJs:

> "At any time following the assignment of the appeal to an Administrative Judge, and before issuance of an Initial Decision in the matter, a party may request the Administrative Judge to disqualify themself on the grounds of personal bias or other disqualification, by serving and filing a motion promptly upon the discovery of the alleged facts, with an affidavit setting forth, in detail, the matters alleged to constitute grounds for disqualification."

In compliance with OEA Rule 623.2, Employee filed an Affidavit in Support of Motion to Recuse AJ Lim, setting forth her allegations constituting the grounds for disqualification. The issue of disqualification or recusal of judges has been previously addressed by the D.C. Court of Appeals. In *In re M.C.*, 8 A.3d 1215 (D.C. 2010), the D.C. Court of Appeals ruled that the standard for determining whether recusal of a judge is required is an objective one, where an observer could reasonably doubt the judge's ability to act impartially. The Court reasoned that recusal is required if an objective, disinterested observer, fully informed of the facts underlying the grounds on which recusal was sought, would entertain a significant doubt that justice would be done in the case. Also, the Court in *Gibson v. U.S.*, 792 A.2d 1059 (D.C. 2002), held that there need not be a finding of actual bias or prejudice in order to find a violation; rather, it need only to be concluded that the facts might reasonably cause an objective observer to question the judge's impartiality. Moreover, in *Gillum v. U.S.*, 613 A.2d 366 (D.C. 1992), the Court held that to be legally sufficient, the allegation of bias must include facts that (1) are material and stated with particularity; (2) if true, would convince a reasonable person that bias exists; and (3) show that the bias is personal as

opposed to judicial in nature.[19] Lastly, in *York v. U.S.*, 785 A.2d 651 (D.C. 2001), the Court ruled that because the disqualification of a judge may disrupt and delay the judicial process, affidavits of bias are strictly scrutinized for form, timeliness, and sufficiency."

After a thorough review of Employee's arguments on interlocutory appeal, this Board believes that no reasonable observer would question AJ Lim's impartiality in this case. During the July 7, 2025, conference, AJ Lim exercised judicial discretion to revoke AJ Hochhauser's January 29, 2025, order for the submission of additional documentation from Employee's examining doctors. In light of the former presiding AJ's departure, AJ Lim's duty in this matter was to determine the best procedural route for adjudicating the outstanding issue of compliance. Pursuant to OEA Rule 622.2(e), the AJ Lim retained the power to regulate the course of the proceeding, which reasonably includes the revocation and issuance of orders based on his assessment of the facts and circumstances related to the procedural posture of this appeal. This Board assesses that the AJ's decisions relied on established OEA rules and were applied even-handedly. We note that Employee's request for leave to submit a motion for summary judgment was granted during the July 7, 2025, conference, which weakens her assertion that the AJ displayed favoritism towards Agency.

Additionally, there is a lack of evidence in the record to support a finding that the AJ's revocation of AJ Hochhauser's February 24, 2025, order was the result of animus, bias, or a conflict of interest. Adverse rulings, such as the exclusion of evidence or the denial of motions, are routine judicial functions. In *Liteky v. United States*, 510 U.S. 540 (1994), the U.S. Supreme Court ruled that "judicial rulings alone almost never constitute a valid basis for an allegation of bias or partiality. Thus, Employee's disagreement with AJ Lim's revocation of the previous AJ's

[19] Citing *In re Bell*, 373 A.2d 232, 234 (D.C.1977)); *See also Gregory v. United States*, 393 A.2d 132 (D.C.1978).

orders is insufficient to warrant his disqualification. Similarly, Employee's displeasure with the AJ's valuation of what is required to rule on the issue of compliance do not rise to the level of objective bias. Finally, there is no evidence of a relationship, financial interest, or external influence that would cause a reasonable person to doubt AJ Lim's ability to adjudicate the outstanding legal issues in an impartial manner. Because the AJ's procedural rulings are the result of reasoned decision-making based on the record and the parties' arguments, recusal is neither required nor warranted. Therefore, Employee's claims of bias, impartiality, and prejudice must fail. As a result, we find no basis for directing the recusal of AJ Lim from this matter.

Ex Parte Communications

Employee asserts that the AJ engaged in *ex parte* communications with Agency by accepting its documents without forwarding them to her, in violation of OEA Rule 607.7.[20] Under OEA Rule 699.1, an *ex parte* communication is "any oral or written communication between an Administrative Judge and a party to a legal proceeding, or any other person involved in the case, outside of the presence of the opposing party or the opposing party's attorney." An *ex parte* communication which involves the merits of the case is prohibited.[21] Pursuant to Rule 625.3, "[w]hen an Administrative Judge determines that a party has initiated a prohibited *ex parte* communication, the Administrative Judge may impose sanctions or remedial relief as may be appropriate under the circumstances." Lastly, in the event of prohibited communication, the AJ must describe the occurrence on the record with notice to the parties by filing a memorandum, or by filing any writing delivered to the AJ.[22]

[20] We note that OEA Rule 607 applies to this Office's mediation program. OEA Rule 608 governs filing requirements and service of pleadings. In accordance with Rule 608.9, "[f]or appeals filed pursuant to § 604.3, a party may affect service by electronically mailing a copy of the document to each party. Each document must be accompanied by a certificate of service specifying how, when, and on whom service was made."
[21] OEA Rule 625.1.
[22] OEA Rule 625.2.

In this case, the proper recourse for any allegation of a parties' engagement in *ex parte* communications is a motion for sanctions made to the presiding AJ, not a motion for recusal. Notwithstanding, this Board finds no evidence in the record which demonstrates that Agency, who Employee claims submitted documentation to the AJ without proper service, engaged in prohibited communications. After reassignment, AJ Lim's June 17, 2025, order directed the parties to provide electronic copies of all relevant documents pertaining to the matter including the "ID, Opinion & Order, Motion for Compliance, Motion for Interlocutory Appeal, etc." These documents were already received in the record by AJ Hochhauser, and AJ Lim clarified that the purpose of resubmission was to streamline the matter and "determine the best path forward." In response, counsel for Agency emailed the AJ electronic copies of all identified documents and copied Employee. On June 20, 2025, at 12:35 p.m., Agency emailed Employee to inform her that its previous email "bounced back" due to size limitations. Agency's counsel requested that Employee identify an alternative strategy for resending the documents and provided "…you should have them all (they include nothing that I haven't previously sent you)."[23] Accordingly, we conclude that the AJ did not engage in *ex parte* communications with Agency; all documents received in response to the AJ's June 17, 2025, order were already part of the record; and there was no violation of OEA Rule 625.[24]

Conclusion

Employee fails to present facts that would convince a reasonable person that bias or prejudice exists. Moreover, an observer would not reasonably doubt AJ Lim's ability to act impartially in this matter. There is no proof that the AJ engaged in *ex parte* communications with

[23] *Agency's Opposition to Employee's Recusal Motion* at Exhibit 1.
[24] On June 20, 2025, at 4:16 p.m., Agency emailed the AJ and copied Employee to inform him that its earlier email to Employee was not delivered because of the file size. The AJ confirmed receipt of Agency's submission on the same day.

Agency. Employee has also not persuaded this Board to conclude that any error on the AJ's part required the reassignment of a new judge.[25] Consequently, this Board must uphold the AJ's ruling rejecting disqualification, and we deny Employee's motion for interlocutory appeal.

[25] The AJ's July 14, 2025, order erroneously stated that Employee, and not Agency, submitted the request to withdraw its request to certify an interlocutory appeal on July 10, 2025. Agency sought to withdraw its motion after the AJ Lim revoked AJ Hochhauser's February 24, 2025, order requesting additional medical documentation. This error is *di minimus* in nature and did not deprive Employee of the opportunity to respond or result in injustice.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Motion for Interlocutory Appeal is **DENIED** and the matter is **REMANDED** to the Administrative Judg.

FOR THE BOARD:

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Pia Winston, Chair

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Arrington L. Dixon

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Lashon Adams

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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.