



## FINDINGS OF FACT

The following facts are not subject to genuine dispute:

Employee was employed by DHS as a Social Services Representative for almost four years until she was terminated by the Agency effective December 6, 2022, pursuant to 6B DCMR §1607.2, after an investigation by the Agency's Office of Program Review, Monitoring, and Investigation (hereinafter "OPRMI") and the District's Office of the Inspector General (hereinafter "OIG") revealed that she had improperly received public assistance benefits reserved for District residents by falsifying her address while admitting to being a resident of Virginia. At least some of these benefits were received while she was an employee of DHS tasked specifically with the administration of such benefits. As such, she was charged with violating the District Personnel Manual ("DPM"), specifically multiple violations of 6-B DCMR § 1607.2 (a)(1) "Obtaining a direct or indirect financial interest that an employee should reasonably expect to be in conflict or appear to be in conflict with his or her official duties" as well as violation DPM, 6-B DCMR § 1607.2 (b)(3): "Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record". As a result of these violations of the DPM, she was terminated. She was afforded the opportunity to respond in writing to the designated Hearing Officer prior to the Hearing Officer confirming DHS's action and DHS taking final action to remove Employee from her position effective January 30, 2023.<sup>2</sup>

On February 17, 2023, Agency served her a Final Notice of Summary Removal charging her with "Conduct prejudicial to the District Government" under the District Personnel Manual ("DPM")'s 6B DCMR § 1607.2 (a)(11): Obtaining a direct or indirect financial interest that an employee should reasonably expect to be in conflict or appear to be in conflict with his or her official duties and making "False Statements/Records" under DPM, 6B DCMR § 1607.2 (b)(3): Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record.

The notice advised Employee that she could elect to file an appeal with the Office of Employee Appeals within thirty calendar days. This final decision advised Employee of her appeal rights to this Office and listed the Office's address and telephone number. Attached to the decision was a copy of the Office's Petition for Appeal Form and the OEA Rules.

On March 3, 2025, the D.C. Superior Court Order dismissed without prejudice the criminal charges filed against Employee. Agency notes that Employee does not deny her guilt of the charges against her and argues that this decision by the US Attorney's Office has no bearing on the legitimacy of her termination and the violations of the DPM that underlie her termination.

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<sup>2</sup> *Id.*, Tab No. 4 (Hearing Officer Report).

It was not until June 30, 2025, almost two and a half years (2.5) after the effective date of her termination, and almost two and a half years (2.5) after she received her notice of the separation, that Employee filed the instant petition for appeal with the Office.

### ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 631.2, 68 D.C. Reg. 012473, reads as follows: “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.” According to OEA Rule 631.1, *id*, a party’s burden of proof is by a “preponderance of the evidence.”

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the Comprehensive Merit Personnel Act (“CMPA”). Among these amendments was the addition of a statutory time limit for filing an appeal in this Office. The relevant section reads as follows: “Any appeal shall be filed within 30 days of the effective date of the appealed agency action.” D.C. Official Code § 1-606.03(a) (2001). The Office’s Rules and Regulations have been amended to reflect this change. *See* OEA Rules 604.2, 68 D.C. Reg. 012473 (2021). The manner in which this time limitation is calculated is provided in OEA Rule 603.1: “In computing the number of days allowed for complying with any deadline as instructed by an Administrative Judge, the first day counted is the day after the event from which the time period begins to run. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period shall be extended to the end of the next business day.”

Agency argues that while the D.C. Court of Appeals has held that the deadline is not jurisdictional, it affirmed that OEA is authorized to dismiss late-filed appeals outright if the agency objects to the untimeliness. *Sium v. Office of the State Superintendent of Educ.*, 218 A.3d 228, 233 (D.C. 2019). In its Motion to Dismiss, Agency highlights that OEA lacks jurisdiction in this matter because Employee's appeal was filed with this Office more than thirty (30) days from the effective date of her termination. Agency explained that Employee was terminated effective January 30, 2023. The Final Agency Decision-Separation was delivered to Employee's address on file on February 17, 2023. Agency also notes that Employee was provided information of her termination, along with the documents required to file her appeal with OEA via email on February 17, 2023. Agency explains that Employee had thirty (30) days from February 17, 2023, to file an appeal with OEA, but she failed to do so. The thirty (30) day requirement passed in March of 2023. Employee filed her appeal on June 30, 2025, which is more than two years after the effective date of her termination. Therefore, her appeal is untimely.<sup>1</sup>

It is undisputed that Employee’s Petition was not filed in a timely manner. In this matter, Employee does not claim that she was unaware of the filing deadline. The final notice from Agency to Employee informed her that she has thirty (30) calendar days from the effective date of the termination to file an appeal. Agency provided Employee with the appropriate notice of her appeal rights, a copy of OEA Rules, information regarding its website, and an appeal form. Having been afforded the appropriate notice, Employee cannot claim ignorance of her petition deadline.

In her brief, Employee states that filing her OEA appeal while she had an active criminal

case would have risked her Fifth Amendment Right against Self-Incrimination. Thus, she knowingly decided not to file an appeal within the thirty (30) day deadline until her criminal case was resolved two years later. Employee claimed equitable tolling and said she filed the instant appeal almost four months after the dismissal of her criminal case. Employee did not explain why she still waited almost four months after the dismissal to file her appeal.

In *Brewer v. D.C. Office of Empl. Appeals*, 163 A.3d 799, 802 (D.C. 2017), *Mathis v. Dist. of Columbia Hous. Auth.*, 124 A.3d 1089 (D.C. 2015), and *Sium v. Office of the State Superintendent of Educ.*, 218 A.3d 228, 233 (D.C. 2019), the D.C. Court of Appeals (“Court”) held that the thirty-day filing deadline is a claim-processing rule subject to equitable tolling. The Court explained that whether equitable tolling is appropriate “is a fact-specific question that turns on balancing the fairness to both parties.” *Mathis, id.* at 1104. As the Court further explained, “[w]e have said that ‘equity aids the vigilant,’ and have indicated that whether a timing rule should be tolled turns on whether there was unexplained or undue delay and whether tolling would work an injustice to the other party,” *Id.* (citing *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 403–04 (D.C. 1991)). The importance of ultimate finality in legal proceedings is also a factor to be taken into consideration. See *Clement v. District of Columbia Dep’t of Human Servs.*, 629 A.2d 1215, 1218 (D.C. 1993).

There are several problems with Employee’s equitable tolling argument. First, Employee does not explain why she took almost four (4) months after the dismissal of her criminal case to file her appeal with OEA. It is evident that she was not vigilant as required by the Court in *Mathis*. Employee’s explanation does not justify her delay in filing. Second, her Fifth Amendment argument, which is her only cited reason for not filing within 30 days of her dismissal, is unpersuasive since the dismissal of her criminal case was without prejudice. Therefore, she still is subject to self-incrimination if her appeal proceeds. Lastly, Employee’s delay does not meet the fairness balancing requirements needed to support the principles underlying the doctrine of equitable tolling as enunciated in the cases cited above. Employee’s lengthy delay worked an injustice to Agency as her untimely filing jeopardized the availability of Agency’s witnesses and would burden Agency during a time of dire budget constraints.

Based on the above, I conclude that Employee did not meet the burden of proof on this issue and therefore she did not establish that this Office has jurisdiction of her appeal. The Administrative Judge concludes that the petition was untimely and should be dismissed for lack of jurisdiction.

#### ORDER

It is hereby **ORDERED** that the petition for appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Joseph Lim  
JOSEPH E. LIM, Esq.  
Senior Administrative Judge