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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0020-25
EMPLOYEE ¹ ,	)	
Employee	)	
	)	Date of Issuance: March 26, 2026
v.	)	
	)	MICHELLE R. HARRIS, ESQ.
D.C. OFFICE OF UNIFIED COMMUNICATIONS,	)	Senior Administrative Judge
Agency	)	
	)	
Employee, <i>Pro Se</i> Jeremy Greenberg, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On January 22, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Office of Unified Communications’ (“Agency” or “OUC”) decision to terminate him from his position as an Electronics Engineer. The effective date of Employee’s separation from service was November 26, 2024. Following a letter from OEA dated January 22, 2025, requesting an Agency Answer, Agency filed requests for an Extension of Time to File its Answer on February 20, 2025, and March 7, 2025.² Agency filed its Answer on March 14, 2025. This matter was initially assigned to Administrative Judge Lois Hochhauser (“AJ Hochhauser”) on or about March 15, 2025. On March 25, 2025, AJ Hochhauser issued an Order requiring the parties to submit briefs regarding the jurisdiction issues raised by Agency in this matter. Specifically, Agency cited that Employee failed to file his appeal within the 30-day timeline, and as a result, Employee’s appeal was untimely and should be dismissed. Employee’s brief was due by or before April 17, 2025, Agency’s response was due by May 1, 2025. The parties submitted their briefs as required by AJ Hochhauser.

On June 24, 2025, the undersigned Senior Administrative Judge (SAJ”) issued an Order notifying the parties that this matter had been reassigned to me. That Order also convened a Status Conference for July 8, 2025. Both parties appeared for the Status Conference as required. During the

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

² These requests were granted by OEA Executive Director, Sheila Barfield, Esq.

Conference, the undersigned determined that outstanding jurisdictional issues needed to be addressed. Specifically, the undersigned noted that Employee was classified as a “term” employee at the time of his separation from Agency. Agency cited during the conference that it believed Employee’s status as a term employee did not divest this tribunal of its jurisdiction and reiterated its position that Employee’s Petition for Appeal was untimely filed and that OEA did not have jurisdiction. The undersigned advised that this should be in writing for the purposes of the record. Employee noted during the Status Conference that he would rely upon the filings he had already submitted for the record for consideration of the jurisdictional matter. On July 8, 2025, I issued a Post Status Conference Order requiring Agency to file its response by or before July 25, 2025. On July 9, 2025, Employee sent an email addressing the jurisdiction issues in this matter. The undersigned advised Employee that email was not appropriate and that all submissions must be sent in accordance with the OEA rules of service. As a result, the undersigned advised that an Order would be issued providing Employee with a date to file his submissions. I issued a Supplemental Post Status Conference Order on July 9, 2025, requiring Employee to submit his response by July 18, 2025, and Agency’s response was still due by or before July 25, 2025.

Both parties filed their respective briefs as required. Further, Agency filed a Notice of Authority on August 7, 2025, citing a recent decision from the District of Columbia Court of Appeals. On August 13, 2025, Employee sent email correspondence citing Agency’s recent submission and other matters. Employee was advised that any such communications must be submitted in writing pursuant to OEA rules of service. On November 19, 2025, I issued an Order Regarding Jurisdiction and an Order for Briefs in this matter. Regarding the Agency’s claim that this matter should be dismissed because Employee filed his Petition for Appeal beyond the 30 day timeline, I found that pursuant to recent OEA Board and D.C. Court of Appeals rulings, despite the fact that Employee filed his appeal 57 days from the effective date of his termination – making it 26 days past due, that this Office still retained jurisdiction over his matter. The undersigned noted that in consideration of the applicable D.C. Court of Appeals and OEA Board rulings, that the “26-day delay was not significant or egregious to amount to any prejudice or injustice upon the other party.” Further, that Order also found that pursuant to the provisions in District Personnel Manual (“DPM”) § 209.11, that because Employee had completed his probationary period, and because his termination was effectuated prior to the expiration of his term, he was subject to separation “effectuated in accordance with Chapter 16.” Accordingly, I determined that the parties should submit briefs addressing whether Agency had cause to terminate Employee from service. Agency’s brief was due by or before December 15, 2025, Employee’s brief was due by or before January 9, 2026, and Agency had the option to submit a sur-reply brief by or before January 20, 2026.

On December 4, 2025, Agency filed a Motion to Modify the Briefing Schedule. Agency cited therein that it received the undersigned Order on November 26, 2025, and due to its caseload and holiday schedule, additional time was needed to submit its required brief. Agency also noted that it had contacted Employee via email regarding its request but had not received a response by the time it filed its Motion. Upon consideration of the request, I issued an Order on December 5, 2025, granting the Motion. Agency’s brief was now due by or before January 15, 2026, Employee’s brief was due by or before February 13, 2026, and Agency had the option to submit a sur-reply brief by or before February 25, 2026. On December 8, 2025, Employee filed a Response to Agency’s Motion to Modify the Briefing Schedule.

On January 12, 2026, Agency filed a Motion to Dismiss, citing therein that it had fully rescinded the termination action of Employee. Agency cited that on December 25, 2025, “OUC

rescinded its Final Agency Decision which terminated Employee.” Further, Agency noted that “[i]nstead, pursuant to his term appointment, Employee’s official last day of employment was December 1, 2024.” Agency also noted that at the time of the submission of its Motion to Dismiss, that it was “in the process of remitting payment to Employee for owed back pay based on its rescission of Employee’s discipline.” As a result, Agency asserts that because it rescinded the termination and Employee’s term had expired that OEA did not have jurisdiction over this matter and it should be dismissed. On January 13, 2026, I issued an Order scheduling a Status Conference for January 20, 2026. Both parties appeared for the Status Conference as required. The undersigned advised that because Agency had raised a jurisdiction issue, it must be addressed prior to any further actions on the merits of the matter. As such, Employee was advised he would have to submit a response regarding the Motion to Dismiss. On January 20, 2026, I issued a Post Status Conference Order requiring Employee to submit his response by or before February 13, 2026. Employee filed his response as required. On March 23, 2026, Agency filed a Notice of Payment, citing therein that the backpay owed to Employee had been remitted to him on March 11, 2026. Upon review of the record and submissions of the parties, I have determined that an Evidentiary Hearing is not warranted. The record is now closed.

JURISDICTION

For the reasons that will be explained below, this Office lacks jurisdiction over this matter.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (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:

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.

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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Agency’s Position

Agency asserts this Office lacks jurisdiction over this matter. Agency avers that Employee began his tenure with OUC in a Career Temporary Appointment on June 8, 2020, which was to expire on September 30, 2020. Agency notes that Employee was later converted to a non-competitive

Term Appointment on August 21, 2021, which had an initial expiration of October 1, 2022. Agency cites that Employee's term was extended on September 22, 2022, and October 19, 2023. Agency avers that Employee's October 19, 2023, extension "advised him that his term would not exceed December 1, 2024."³ Agency further cites that on November 26, 2024, it issued a Final Decision terminating Employee for cause. Agency notes that "[o]n January 22, 2025, OEA docketed Employee's [Petition for Appeal]." Further, Agency avers that on November 19, 2025, OEA ruled that it would consider Employee's Petition for Appeal. Agency asserts that on December 25, 2025, it "rescinded its Final Agency Decision which terminated Employee." Instead, Agency maintains that "pursuant to his term appointment, Employee's official last day of employment was December 1, 2024." Agency also noted it was remitting backpay owed to Employee based on its recession of the disciplinary action.⁴

Agency argues that because it has rescinded the final notice/disciplinary action against Employee, that this Office has no jurisdiction over this matter. Agency asserts that pursuant to OEA rulings, this Office "has no jurisdiction over a separation via expiration of a term appointment."⁵ Agency contends that "without an operative adverse action which resulted in a removal, OEA now lacks jurisdiction over Employee's challenge to his separation."⁶ Agency further argues that "pursuant to 6B DCMR §209.6, a term employee does not acquire permanent status based on his appointment(s)." Agency further cites that when a term employee has served over four years, like Employee, there are three "mandatory options it must take." These mandatory options are: "*1) convert the appointment into a permanent position if the employee was appointed through open competition; 2) hire the employee into another position through open competition or 3) not appoint the employee to another term.*"⁷ (Emphasis added in submission). Agency argues that Employee's term ended December 1, 2024, and it has elected not to appoint him to another term. Further, Agency asserts that it "cannot convert Employee into a permanent position, even if it desired to, because Employee was not hired through open competition." Agency also argues that OEA has no jurisdiction over non-conversion and also lacks jurisdiction to "direct OUC to hire him through open competition." Agency reiterates that because there is "no longer a final decision at issue over which OEA has jurisdiction, the tribunal should dismiss the [Petition for Appeal]."⁸

Employee's Position

Employee avers the jurisdiction of this Office was "already established on November 25, 2025 [sic], after briefings and hearings before this tribunal..."⁹ Employee also asserts that the Agency has already stipulated that "the terms of employment of a "TERM" employee does not remove the jurisdiction of OEA."¹⁰ Employee argues that Agency requested and was granted an extension of a deadline to file a brief addressing the merits of this matter, but instead "chose to challenge the jurisdiction of the OEA through an unclear action that would have made more sense through a mediation or settlement rather than a unilateral tactic to delay the proceeding."¹¹

³ Agency's Motion to Dismiss (January 12, 2026).

⁴ *Id.* at Page 2.

⁵ *Id.* citing to *Brooks v D.C. Pub Schs.*, OEA Matter No. J-0136-08, Opinion and Order, at 4 (July 30, 2010).

⁶ *Id.* at Page 3.

⁷ *Id.*

⁸ *Id.*

⁹ Employee's Opposition to Agency's Motion to Dismiss (February 6, 2026).

¹⁰ *Id.*

¹¹ *Id.*

Employee further avers that “[o]n the advisement of the OAG, an OUC Agency action-event occurred on or shortly before December 23, 2025, which resulted in an Agency rescission letter being emailed to the Employee less than 24 hours before a hearing before a separate tribunal, the Office of Administrative Hearings, OAH, which occurred on December 24, 2025.”¹² Employee asserts that those hearings addressed a denial of unemployment benefits. Employee also avers that “the rescinded action proscribed in the rescission letter was not entered into evidence but was considered in the Judge’s final order to reverse the denial of employment benefits.”

Employee also argues that the “Agency’s action to rescind the adverse termination from more than a year ago cannot restore my employment for three or four days until term expires...[t]his action violates every article in the CBA (Articles 1-8) and is not defined in the DPM as a remedy to an appeal nor a settlement for a grievance.”¹³ Employee cites that an OEA matter determined that “a unilateral action (an Agency rescission) cannot be used as basis for denying jurisdiction.”¹⁴ Employee disagrees with Agency’s argument that “had everything occurred normally [his] employment would have normally expired.” Employee contends that he still “would have cause to challenge because of the various promotions and new hires [he] witnessed before [he] he was forced out of his position.” Further, Employee asserts that before he was forced out, there were “two new hires that would assume the role [he] performed.”¹⁵ Employee avers that the “allegations [he] put forth in the original petition to appeal cover workplace discrimination, whistleblower violations and equal employment rights violations which have all been triggered and uncovered by Agency’s final decision and the actions that result in an illegal termination from employment.”¹⁶ Employee also avers that he has not received the backpay Agency asserts was to be sent to him for backpay owed.

Employee avers that Agency’s actions in the rescission were improper and that jurisdiction should be retained. Employee also argues that “without the truthful reason for the rescission or even the truth in the final agency decision discovered [he] continues to experience the effects of the negative aspects of the Agency’s action in [his] life.” Employee avers that OEA retains jurisdiction on this matter.

ANALYSIS¹⁷

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-B

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* citing to OEA Matter No. 1601-0072-22.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 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”).

of the District of Columbia Municipal Regulation (“DCMR”) § 604.1,¹⁸ this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule § 631.2, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021) states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Further, pursuant to this OEA Rule 631.1, the burden of proof is by a preponderance of the evidence which is defined as “[t]hat 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.” This Office has no authority to review issues beyond its jurisdiction.¹⁹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.²⁰

As was noted in the aforementioned procedural history, following an Order issued on November 19, 2025, the undersigned found that this Office had jurisdiction over the Petition for Appeal. In that same Order, the parties were required to submit briefs addressing the Agency’s action of terminating Employee from service. Following the receipt of an extension of time to file its brief, Agency filed a Motion to Dismiss on January 12, 2026, citing therein that on December 25, 2025, it “rescinded its Final Agency Decision which terminated Employee.” Instead, Agency maintains that “pursuant to his term appointment, Employee’s official last day of employment was December 1, 2024.” Agency also noted it was remitting backpay owed to Employee based on its recession of the disciplinary action.²¹ Agency asserted that because it had fully rescinded the adverse action of terminating Employee from service, this Office lacks jurisdiction and Employee’s Petition for Appeal should be dismissed. Agency also asserted it was already processing the backpay for the pay missed between the effective date of termination on November 26, 2024, and the effective date of the expiration of the Employee’s term appointment which was December 1, 2024.

Employee opposes the Agency’s Motion to Dismiss and filed his Opposition on February 6, 2026, arguing that Agency’s action of rescinding the termination were not made in good faith. Employee asserted that the previous determination of jurisdiction over his matter should be upheld. Further, Employee asserts that Agency’s actions impacted his life and that Agency’s decision to rescind the termination could have been better managed through mediation or otherwise. Employee does not deny the receipt of the rescission letter but asserted at the time of the filing of his Opposition that he had not yet received the backpay for the missed days between November 26, 2024, and December 1, 2024. However, on March 23, 2026, Agency filed notice that the backpay had been remitted to Employee on March 11, 2026.

¹⁸ See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

¹⁹ See. *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, Opinion and Order on Petition for Review (September 30, 1992).

²⁰ See. *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, Opinion and Order on Petition for Review (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, Opinion and Order on Petition for Review (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

²¹ *Id.* at Page 2.

This Office has consistently held that the jurisdiction of OEA is determined by the penalty imposed by an agency *at the time the appeal is filed*.²² (Emphasis added). Once jurisdiction of this Office has attached, it cannot be divested by an agency's decision to unilaterally amend an imposed penalty, *unless* the employee consents to such divestiture *or unless the agency completely rescinds the action being appealed*.²³ (Emphasis added). In the instant matter, while the undersigned agrees with Employee that Agency's decision/action to rescind the termination would have been better managed through mediation earlier in the disposition of this appeal, because the adverse action has been completely rescinded, I must find that OEA is divested from its jurisdiction over this matter. Further, OEA has also consistently maintained that this tribunal lacks jurisdiction over the expiration of term appointments.²⁴ Because Agency has fully rescinded the termination action against Employee, there is no adverse action as defined in 6-B DCMR § 604.1 for which this Office has jurisdiction. Accordingly, this matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge

²² See. *Royal v. Metropolitan Police Department*, Office of Employee Appeals Initial Decision, OEA # 1601-0003-10 (March 28, 2013); See also *Hagan v. Department of the Army*, 99 M.S.P.R. 313 (2005).

²³ See. *Tina Davis v DMV*, OEA Matter No. 1601-0124-15 (January 31, 2017), *Himmel v. Department of Justice*, 6 M.S.P.R. 484 (June 2, 1981).

²⁴ See. *Carolynn Brooks v. D.C. Public Schools*, OEA Matter No. J-0136-08, *Opinion and Order on Petition for Review* (July 30, 2010); *Roxanne Smith v. D.C. Department of Parks and Recreation*, OEA Matter No. J-0103-08, *Opinion and Order on Petition for Review* (May 23, 2011).