THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. J-0033-26
	)	
v.	)	Date of Issuance: April 29, 2026
	)	
D.C. DEPARTMENT OF BUILDINGS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

Employee, *Pro Se*
Alicia Shames, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 9, 2026, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the D.C. Department of Buildings' ("DOB" or "Agency") decision to terminate him from his position as a Program Manager, effective February 7, 2026. OEA issued a Request for Agency's Answer to Employee's Petition for Appeal on February 9, 2026. Thereafter, on March 11, 2026, Agency filed its Answer and Motion to Dismiss for Lack of Jurisdiction. Agency stated therein that OEA lacked jurisdiction over Employee's Petition for Appeal because Employee's last position of record was in Management Supervisory Service ("MSS"). Agency cited that pursuant to 6-B DCMR § 604.1 or D.C. Official Code § 1-606.03, separation from an MSS appointment does not constitute an appealable action.

This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on March 12, 2026. Thereafter, I issued an Order requiring Employee to address the jurisdiction issue raised by Agency in its Answer and Motion to Dismiss for Lack of Jurisdiction. Employee's brief was due by March 27, 2026, and Agency had the option to file a response by April 10, 2026. Both parties have submitted their respective briefs. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

The jurisdiction of this Office pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

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

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (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:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

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

Employee's Position

Employee does not deny the fact that he held an MSS appointment at the time of his termination. Instead, he argues that Agency failed to address the nature of his termination. He cites that his removal is tied to a performance evaluation and pursuant to 6B District of Columbia Municipal Regulations ("DCMR") § 604.1(a), OEA has jurisdiction over removals. Employee further asserts that "the relevant inquiry is not limited to Petitioner's classification within the MSS, but whether the removal was performance-based."[3] Employee argues that because Agency has admitted and the record reflects that his termination was performance-based, the nature of the personnel action precludes the dismissal of this matter at this stage. Employee explains that while MSS employees generally serve "at-will" pursuant to 6B DCMR § 3813.1, classification alone does not resolve jurisdiction where the Agency attributes the removal to performance.[4]

Agency's Position

Citing to case law and the 6B DCMR 3813, Agency states in its March 11, 2026, Motion to Dismiss that OEA lacks jurisdiction over this matter because Employee held an MSS appointment at the time of his separation. Agency explains that pursuant to 6B DCMR § 3813.1, "[a]n appointment to the Management Supervisory Service is an at-will appointment." Agency argues that as an at-will

[2] OEA Rule § 699.1.
[3] Petitioner's Brief in Opposition to Agency's Motion to Dismiss for Lack of Jurisdiction (March 23, 2026).
[4] *Id*.

employee, Employee served "at the pleasure of the appointing authority" and was subject to separation "at any time." 6-B DCMR § 3813.1.

Agency avers that 6-B DCMR § 3813.7 explicitly states that "[t]erminations from the Management Supervisory Service are not subject to administrative appeals." Citing to case laws, Agency maintains that while procedural protections are afforded to Career Service employees, MSS employees are excluded from those protections. Agency notes that Employee's status as an MSS, at□will employee at the time of his separation preemptively precludes OEA from any further review of the merits of this case.[5] Agency contends that pursuant to 6-B DCMR § 631.2, Employee has the burden of proof on issues of jurisdiction and because Employee has failed to meet his burden of proving jurisdiction by a preponderance of the evidence as required, OEA should dismiss Employee's appeal for lack of jurisdiction.[6]

Analysis[7]

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.[8] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[9] D.C. Code § 1-606.03 (a) and DPM § 604.1 provide the parameters of OEA's jurisdiction. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act (hereinafter "CMPA"), sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . ., or a reduction in force. . .

D.C. Official Code § 1-609.54 provides further elucidation on the OEA's statutorily mandated jurisdictional limits in the instant matter. It provides in relevant part that:

> Employment-at-will
>
> (a) An appointment to a position in the Management Supervisory Service shall be an at-will appointment. Management Supervisory Service employees shall be given a 15-day notice prior to termination....

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[5] Agency's Answer and Motion to Dismiss for Lack of Jurisdiction (March 11, 2026). *See also*. Agency's Reply to Opposition to Motion to Dismiss for Lack of Jurisdiction (April 10, 2026).
[6] *Id*.
[7] 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").
[8] *See Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[9] *See Brown v. District of Columbia Public. School*, 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).

In *Grant v. District of Columbia*, the District of Columbia Court of Appeals held that "while the CMPA and its implementing regulations provide procedural protections to Career Service employees who are subject to adverse employment actions (such as notice and hearing rights, and the right to be terminated only for cause), MSS employees are statutorily excluded from the Career Service and thus cannot claim those protections."[10]

Based on the preceding statutes, case law, and regulations, it is plainly evident that OEA lacks the jurisdictional authority to review adverse action appeals of MSS employees. Here, Employee does not deny that he held an MSS appointment at the time of his termination. Additionally, Agency has provided Employee's Notification of Personnel Action – Standard Form-50 ("SF-50") processed on January 14, 2022, which highlights the following: 6-B – **Nature of Action "MSS Appt"; 6-D – Legal Authority "DC Code Sec 1-609.54"**.[11] (Emphasis added). Agency also submitted Employee's employment offer letter dated December 20, 2019, which informed Employee that he was hired into a "**Management Supervisory Service (MSS) position of Program Manager 0340 – MSS Appointment**…" This letter further informed Employee that "… **persons appointed in the Management Supervisory Services do not acquire permanent status, serve at the pleasure of the appointing personnel authority, and may be terminated at any time.**" (Emphasis added). Employee acknowledged and signed this letter on December 20, 2025.[12]

The Court in *Evans v. District of Columbia*, 391 F. Supp. 2d 160 (2005), reasoned that because MSS employees serve "at-will", they have no property interest in their employment because there is no objective basis for believing that they will continue to be employed indefinitely. The Court provided that the only rights enjoyed by MSS employees are the "right to 15 days' notice before termination; a separate notice in the event of termination for disciplinary reasons describing the reason for termination; and if the employee requests in writing, a final administrative decision on the issue of severance pay by the personnel authority."[13] Applying this reasoning to the present case, I find that Agency clearly fulfilled its obligation by providing Employee with a written notice of his impending termination on January 22, 2026, providing Employee with more than a fifteen-day (15-day) notice prior to termination and in compliance with 6B DCMR § 3813.1.[14]

Based on the foregoing, I conclude that since Employee's last position of record was obtained through an MSS appointment, I cannot adjudicate his appeal, and it therefore must be dismissed for lack of jurisdiction. Employee herein, has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 631.1, *id*, as 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." Based on the foregoing, I conclude that Employee has not met the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

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[10] Citations omitted. 908 A.2d 1173, 1178 (D.C. 2006).
[11] *See*. Agency's Answer and Motion to Dismiss, *supra*, at Exhibit 1.
[12] *Id*. at Exhibit 2. The D.C. Department of Consumer and Regulatory Affairs ("DCRA") issued Employee's offer letter in 2019. However, pursuant to the Department of Buildings Establishment Act of 2020, D.C. Law 23-269, 68 D.C. Reg. 4174 (2021), the responsibilities of the DCRA were transferred to DOB and the Department of Licensing and Consumer Protection ("DLCP") in October 2022. Agency asserts that Employee began working at the DCRA on January 6, 2020, and was transferred to DOB on October 9, 2022.
[13] *Evans v. District of Columbia,* p.166 (2005).
[14] *See*. Agency's Answer and Motion to Dismiss, *supra*, at Exhibit 3.

ORDER

It is hereby **ORDERED** that Agency's Motion to Dismiss is **GRANTED** and the Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge