

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.: 2401-0018-25
v.	)	
	)	Date: April 23, 2026
D.C. HOUSING COMMISSION,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Mediator with the D.C. Housing Commission (“Agency”). On December 9, 2024, Agency notified Employee of its intent to separate her from service pursuant to a Reduction-in-Force (“RIF”). According to Agency, the RIF was effectuated due to a lack of work. The effective date of Employee’s separation was January 10, 2025.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on January 13, 2025. She argued that the notice was insufficient; the RIF violated the Rental Housing Act of 1985; her separation was pretextual; and the RIF was conducted after she filed a complaint with the Equal Employment Opportunity Commission (“EEOC”). Consequently, Employee

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

² *Agency’s Partial Motion to Dismiss, Motion for Summary Adjudication, and Answer to Employee’s Petition for Appeal* (February 13, 2025).

requested reinstatement, back pay, and the restoration of all leave lost as a result of Agency's RIF action.³

On February 13, 2025, Agency filed a Partial Motion to Dismiss, Motion for Summary Adjudication, and Answer to Employee's Petition for Appeal. It asserted that OEA lacked jurisdiction over Employee's claims of retaliation or an alleged violation of the Rental Housing Act. Additionally, it provided that the RIF notice complied with all statutory requirements. In the alternative, Agency suggested that even if Employee did not receive a full thirty-days' notice of separation, her recovery was limited to payment of one additional day of administrative leave. Therefore, Agency requested that the RIF be upheld.⁴

On March 19, 2025, Agency filed a Motion to Dismiss with Prejudice. According to Agency, on December 30, 2025, Employee submitted a grievance through her union representative requesting that Agency immediately rescind the RIF notice based on violations of the District Personnel Manual ("DPM") and the Collective Bargaining Agreement ("CBA"). It explained that Agency denied the grievance on January 9, 2025; Employee appealed Agency's denial of the grievance to an arbitrator on or around January 13, 2025; and the arbitration remained ongoing at the time of its filing. Therefore, Agency reasoned that Employee elected to grieve her RIF separation prior to filing an appeal with OEA, which constituted an election of remedies under D.C. Code § 1-616.52(e). It further characterized Employee's attempted invocation of both the negotiated grievance procedure and the OEA appeal procedure as an impermissible second bite at the apple. Thus, it submitted that Employee's appeal was improperly before this Office.

³ *Petition for Appeal* (January 13, 2025).

⁴ *Agency's Partial Motion to Dismiss* at p. 34.

On March 20, 2025, the AJ issued an order requiring Employee to address the issue of jurisdiction.⁵ In her brief, Employee asserted that she was not precluded from filing an appeal with OEA because Agency did not respond to her grievance in a timely manner. Accordingly, she opined that the grievance did not preclude her appeal to OEA, and she requested that Agency's motion be dismissed with prejudice.⁶

The AJ issued an Initial Decision on October 6, 2025. He concluded that it was undisputed that Employee was a member of the American Federation of Government Employees ("AFGE"), Local 2725; AFGE filed a grievance on Employee's behalf on December 30, 2024; and under the terms of the CBA between the Agency and AFGE, Employee had the right to appeal an Agency final decision via the negotiated grievance procedure or by filing a petition with OEA but not both. The AJ explained that AFGE denied Employee's grievance on January 9, 2025, and she then filed an appeal with this Office on January 13, 2025. Therefore, he reasoned that pursuant to D.C. Code § 1-616.52 (e), Employee was precluded from simultaneously appealing her termination to OEA and through the negotiated grievance procedure. The AJ further ruled that under D.C. Code § 1-616.52 (f), once an avenue of review is first selected, the possibility of review via the other route was closed. Accordingly, the AJ held that OEA lacked jurisdiction over Employee's appeal because she first opted to contest her removal under the grievance procedure outlined in the CBA. As a result, Employee's petition was dismissed.⁷

⁵ *Briefing Order* (March 20, 2025).

⁶ *Employee's Opposition to Agency's Motion to Dismiss with Prejudice* (April 14, 2025). Agency filed a reply to Employee's opposition brief on April 15, 2025. It reiterated its previous argument that OEA was precluded from adjudicating the merits of this RIF action pursuant to D.C. Code § 1-616.52(e). *Agency's Reply* (April 15, 2025). In response, Employee averred that Agency never served her union representative with notice of the RIF; the RIF was unlawful; and OEA case law supports her position. As such, she asked that Agency's motion be denied. *Employee's Reply Brief* (May 16, 2025).

⁷ *Initial Decision* (October 6, 2025).

Employee filed a Petition for Review with the OEA Board on November 21, 2025. First, she argues that the union grievance concerned Agency's purported violations of its RIF notice obligations under Article 3, Section A(1) of the CBA, not whether her specific removal complied with the applicable RIF regulations. Hence, she reasons that her filing did not constitute an election of the grievance procedure. Next, Employee contends that she was not precluded from filing an appeal with OEA because the Step 4 grievance was filed by her union in its independent, institutional capacity and because the grievance was neither signed nor initiated by her. She further opines that the AJ misapplied D.C. Code § 1-616.52 (e) and (f) in finding that this Office lacks jurisdiction because the union grievance and her appeal to OEA contest distinct legal theories, different parties in interest, and separate remedies. Finally, Employee suggests that the AJ should have held a hearing on the issue of jurisdiction to determine the scope of the grievance. Therefore, she asks that the Board reverse the Initial Decision or remand the matter for additional factfinding.⁸

In response, Agency argues that Employee's petition to the Board violates D.C. Code § 1.606.03(c) and Chapter 6-B, Section 635.2 of the D.C. Municipal Regulations ("DCMR") because it was not submitted within the thirty-five-day filing deadline. Alternatively, it submits that Employee's petition should be denied because the arguments contained therein are meritless; she first elected to grieve her separation under the RIF pursuant to the CBA; and Employee's argument that the grievance contested a separate legal issue should be considered waived since it was not presented to the AJ for consideration. Notwithstanding, Agency maintains that Employee's grievance explicitly contested her separation from service; the adequacy of the RIF notice; and the underlying legality of the RIF, the same matters she currently seeks to appeal before OEA.

⁸ *Initial Decision* (November 21, 2025).

Consequently, Agency opines that the Initial Decision is supported by substantial evidence, and it requests that the Board deny Employee's petition.⁹

Filing Deadline

Under D.C. Code § 1-606.03(c) “. . . the initial decision . . . shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period.” In *Baldwin v. D.C. Office of Employee Appeals*, No. 18 CV-1134 (May 7, 2020), the District of Columbia Court of Appeals held that filing deadlines generally do not have jurisdictional force. Additionally, the Court found that it is not enough that the deadline codified in the statute uses mandatory language. Therefore, the Court in *Baldwin* held that because the 35-day deadline is not found in the authority D.C. Code § 1-606.02, but is instead in D.C. Code § 1-606.03, which pertains to appeal procedures, the deadline constitutes a claims-processing rule that may be tolled, relaxed, or waived if equity compels such a result.¹⁰ In the interest of justice and fairness, this Board will consider the merits of Employee's Petition for Review.

Grievances

D.C. Code §§ 1-616.52(e) and (f) provide the following related to the filing of grievances:

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to § 1-606.03, or the negotiated grievance procedure, but not both (emphasis added).

(f) An employee shall be deemed to have exercised their option pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure at such time as the employee timely files an appeal under this section or timely files a grievance in writing in accordance with the provision

⁹ *Agency's Motion to Dismiss and Opposition to Petition for Review* (December 18, 2025).

¹⁰ *See also Neill v. District of Columbia Public Employee Relations Bd.*, 93 A.3d 229, 238 (D.C. 2014), holding that claim-processing rules “may be relaxed or waived.”

of the negotiated grievance procedure applicable to the parties, whichever event occurs first.

The D.C. Court of Appeals in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 277 A.3d 1272 (D.C. 2022), ruled that under D.C. Code § 1-616.52(e)-(f), “an employee shall be deemed to have exercised their option as between appellate forums — an option that is left to ‘the discretion of the aggrieved employee’ — based on where they first file an appeal.” The Court explained that while D.C. Code §§ 1-616.52(e) and (f) provide that “. . . an aggrieved employee may not pursue both avenues of appeal, and uses mandatory language such as ‘shall’ to denote when an employee makes their choice of forum, it does not prohibit an employee from filing an appeal under their CBA despite first appealing to OEA—or vice versa.” It further ruled that Section 1-616.52(f)’s first-filing rule is not of jurisdictional import. The Court went on to distinguish that “the [statute’s] language suggests that an employee’s choice is binding only when the employee has an ‘option’ that can be ‘exercised’ in their ‘discretion.’”

In this case, the AJ found that pursuant to Section 1-616.52(f), once an avenue of review is first selected, either through OEA or the negotiated grievance procedure, the possibility of review via the other route is closed. However, this finding is inconsistent with the holding in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department supra*. The language of D.C. Code § 1-616.52(f) contains no jurisdictional impediment to an employee filing in both forums. Therefore, the AJ’s ruling is not based on substantial evidence.¹¹

¹¹ The D.C. Court of Appeals in *Baumgartner v. Police and Firemen’s Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found 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.

Based on the foregoing, this Board finds it prudent to remand this matter for the development of the administrative record. The AJ made no findings as to whether Employee's selection of venue for review constituted a binding option that was exercised in her discretion. Further, Employee contends that the grievance was neither signed nor initiated by her; the grievance and her OEA appeal contest distinct legal theories, different parties in interest, and separate remedies; and the grievance was filed by her union in its independent, institutional capacity. Similar to the Board's decision in *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0412-10R23, *Opinion and Order on Petition for Review* (January 16, 2025),¹² this matter must also be remanded to determine whether any recovery in Employee's grievance prevents OEA from rendering a decision in this matter.

¹² The OEA Board ruled that pursuant to the holding in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department* and D.C. Code §§ 1-616.52(e)-(f), if an employee files an appeal in one forum, the second forum is not necessarily required to dismiss the appeal. As a result, the matter was remanded to the AJ determine if recovery in the grievance prevents OEA from rendering a decision in the employee's case.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED**, and this matter is **REMANDED** for further 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.