

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 Office Manager 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. 1601-0020-24
v.)	
)	Date of Issuance: March 6, 2025
DEPARTMENT OF CORRECTIONS,)	
Agency)	
)	

OPINION AND ORDER
ON PETITION FOR REVIEW
AND MOTION FOR RECONSIDERATION

Employee worked as a Correctional Officer with the Department of Corrections (“Agency”). On December 7, 2023, Agency issued a final notice of decision suspending Employee for thirty (30) days. Employee was charged with violating District of Columbia Municipal Regulations (“DCMR”) § 1607.2(d) failure/refusal to follow instructions – negligence and §1607.2(e) neglect of duty. The charges stemmed from a March 7, 2023, incident wherein Employee failed to check the restraints of an inmate which ultimately resulted in the inmate escaping from Howard University Hospital. Employee was subsequently suspended without pay from December 11, 2023, until January 10, 2024.²

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

² *Petition for Appeal*, p. 7-14 (January 8, 2024).

On January 8, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He asserted that the suspension penalty was too severe. Additionally, Employee contended that Agency’s adverse action was without merit because it lacked evidence to support its claim. Therefore, Employee requested back pay, attorney’s fees, and that the adverse action be removed from his personnel file.³

Agency filed an Answer to the Petition for Appeal on February 7, 2024. It argued that Employee failed to maintain physical custody and control of an inmate held at an unsecured medical facility. Therefore, it concluded that a thirty-day suspension was appropriate based on the Table of Illustrative Actions. Consequently, Agency requested that OEA uphold its suspension action.⁴

Prior to issuing an Initial Decision, the OEA Administrative Judge (“AJ”) ordered both parties to submit briefs on jurisdiction.⁵ On July 16, 2024, the AJ issued an Initial Decision. He

³ *Id.* at 2.

⁴ *The District of Columbia Department of Corrections’ Answer*, p. 2-3 (February 7, 2024). Agency also filed a Motion to Dismiss on March 18, 2024. It argued that pursuant to D.C. Code § 1-616.52, an appeal from a suspension of ten days or more that also falls within the coverage of a negotiated procedure may, in the discretion of the aggrieved employee, be made to either OEA or raised through the negotiated grievance procedure but not both. To support its argument, Agency provided that the District of Columbia Court of Appeals determined in the *Fraternal Order of Police/Metropolitan Police Department Labor Commission v. D.C. Metropolitan Police Department*, 277 A.3d 1272 (D.C. 2022), that filing restrictions in D.C. Code § 1-616.52 are non-mandatory and have claim-processing limitations. Agency also provided that Employee filed his appeal on January 8, 2024, after he submitted his grievance to Agency on December 19, 2023. It was Agency’s position that Employee timely received Agency’s final decision and Employee’s Petition for Appeal was filed after he already filed a grievance. Thus, it posited that the petition should be dismissed. *Agency’s Motion to Dismiss*, p. 5-6 (March 18, 2024).

Employee filed an Opposition to Agency’s Motion to Dismiss on March 26, 2024. He argued that Agency failed to respond after he filed a grievance. Additionally, Employee asserted that he filed an appeal with OEA to preserve his appeal rights since Agency did not complete the grievance process to challenge his suspension by the prescribed deadline. He contended that pursuant to the language in D.C. Code § 1-616.52, he was not precluded from filing his appeal at OEA. *[Employee’s] Opposition to Agency’s Motion to Dismiss*, p. 11-16 (March 26, 2024).

⁵ *Order* (April 12, 2024). Agency filed a Reply to Employee’s Opposition to Agency’s Motion to Dismiss. Agency explained that D.C. Code §§ 1-616.52 (e) and (f) provides that an aggrieved employee can appeal a disciplinary matter to either OEA or through a negotiated grievances process—but not both and that Employee exercised his decision to pursue the negotiated grievance when he requested arbitration on January 5, 2024. It argued that Employee had until January 10, 2024, to file an appeal at OEA; thus, it posited that Employee should have waited for a response pertaining to arbitration before filing an OEA appeal. Moreover, Agency opined that Employee would not have been prejudiced because his Collective Bargaining Agreement provides an explicit right that an employee can request that the Superior Court of the District of Columbia compel arbitration if Agency were to decline to arbitrate the matter. *Agency’s Reply*

held that in accordance with D.C. Code § 1-616.52(e), Employee could not simultaneously review a matter before OEA and through a negotiated grievance procedure. The AJ provided that § 1-616.52(f) provided that once an avenue of review is first selected, the review in another venue would not be permissible. Because Employee initially appealed through Agency's grievance procedure, the AJ ruled that OEA lacked jurisdiction over the matter. Consequently, the Petition for Appeal was dismissed.⁶

Employee filed a Petition for Review on August 15, 2024. He asserts that the Public Employee Relations Board ("PERB") decertified the Fraternal Order of Police/Department of Corrections Labor Committee ("FOP/DOC Union") on May 20, 2024. Because of the decertification, Agency has declined to arbitrate a matter that falls within the arbitration agreement because the Collective Bargaining Agreement ("CBA") is null and void. Therefore, Employee requests that the matter be remanded for adjudication on the merits and that he receive back pay.⁷

On September 15, 2024, Agency filed a Response to Employee's Petition for Review. It concedes that PERB revoked the FOP/DOC Union's certification as an exclusive bargaining representative on May 20, 2024. Agency submits that it is unable to proceed with Employee's grievance and demand for arbitration. It acknowledges that Employee's appeal to OEA was timely. As a result, it no longer contests OEA's jurisdiction over the matter.⁸

Employee filed a Motion for Reconsideration on September 26, 2024. He requests that the

to Employee's Opposition to Agency's Motion to Dismiss, p. 1-3 (April 30, 2024).

In response, Employee maintained that he preserved his rights by filing an appeal to OEA. Employee explained that he did not seek to litigate the matter twice; he merely wanted the opportunity to appeal his case on the merits. He argued that he should not be penalized for not waiting until Agency responded to his arbitration request. As a result, Employee requested that OEA maintain jurisdiction over the matter. *[Employee's] Opposition to Agency's Reply*, p. 2-6 (May 14, 2024).

⁶ *Initial Decision*, p. 4-6 (July 16, 2024).

⁷ *Petition for Review of Initial Decision*, p. 4-11 (August 15, 2024).

⁸ *Agency's Response to Employee's Petition for Review*, p. 1 (September 16, 2024)

motion supplement the Petition for Review since Agency provided in its response that it no longer contests OEA's jurisdiction. Therefore, Employee requests that the Initial Decision be overturned, the matter be resolved based on the facts and law and that he receive back pay.⁹

OEA Rule 637.4(a) provides that the Petition for Review shall set forth objections to the Initial Decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that new and material evidence is available that, despite due diligence, was not available when the record closed. In his Petition for Review, Employee argues that there is new and material evidence that is available which should be considered by OEA. Specifically, he asserts that the Fraternal Order of Police/Department of Corrections union was decertified on May 20, 2024, and that Agency officially declined to arbitrate the matter. Accordingly, this left bargaining unit employees who chose to grieve, no avenue to contest Agency's action. Agency concedes that Employee will be deprived of an avenue to appeal his suspension, and it does not contest that OEA has jurisdiction to consider the matter. As a result, Employee has provided that there is new and material evidence available. OEA is the appropriate venue for which Employee can appeal his suspension. Therefore, this matter is remanded to the Administrative Judge to consider this case on its merits.

⁹ *Motion for Reconsideration*, p.1-2 (September 26, 2024).

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:

Dionna Maria Lewis, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

Pia Winston

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.