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**THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup> ,	)	
Employee	)	OEA Matter No. J-0067-25
	)	
v.	)	Date of Issuance: January 20, 2026
	)	
D.C. DEPARTMENT OF BEHAVIORAL	)	MICHELLE R. HARRIS, ESQ.
HEALTH,	)	Senior Administrative Judge
Agency	)	
	)	
	)	

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Employee, *Pro Se*

Daniel Thaler, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On August 5, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Department of Behavioral Health's ("Agency" or "DBH") decision to terminate her from her position as a Food Service Worker. The effective date of her termination was November 17, 2023.<sup>2</sup> Following a letter dated August 5, 2025, from OEA requesting an Answer in this matter, Agency filed an Answer and Request for Dismissal on September 4, 2025. Agency cited therein that Employee's Petition for Appeal was untimely filed and that OEA lacks jurisdiction over this matter. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on September 4, 2025. On September 9, 2025, I issued an Order scheduling a Status/Prehearing Conference for September 30, 2025. On September 24, 2025, Agency filed a Supplement to its Motion to Dismiss citing that Employee's Petition for Appeal in this matter was filed untimely by more than "one-and-a-half years." Agency further asserted that this warranted dismissal as this is not subject to equitable tolling.

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

<sup>2</sup> Employee was terminated for the following causes of action: "Neglect of Duty and Attendance Related Offenses. 1. Since September 26, 2023, you failed to perform your duties and responsibilities by not reporting to work (DPM Sections 1605.4(e); 1607.2 (e). 2. From September 26, 2023, to October 10, 2023, you were absent from your position without authorization and placed in an absent without official leave pay status for five (5) or more workdays. (DPM 1605.4(f)(2); 1607.2(f)(4)."

Both parties appeared for the September 30, 2025 Status/Prehearing Conference as required. During the conference the undersigned issued verbal orders for the parties to brief the jurisdiction issued raised by Agency. An Order was issued on September 30, 2025, which codified the oral orders and required that Employee's brief on jurisdiction be submitted by or before October 20, 2025, and Agency's response was due by or before November 10, 2025. Both parties complied with the submission deadlines as required. After considering the parties' arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

### 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.<sup>3</sup>

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. (Emphasis added).

### JURISDICTION

For the reasons explained below, the jurisdiction of this Office has not been established in this matter.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Food Service Worker. In a Final Notice dated November 9, 2023, Employee was terminated from service effective November 17, 2023. Employee was terminated for the following causes of action: "Neglect of Duty and Attendance Related Offenses. 1. Since September 26, 2023, you failed to perform your duties and responsibilities by not reporting to work (DPM Sections 1605.4(e); 1607.2 (e). 2. From September 26, 2023, to October 10, 2023, you were absent from your position without authorization and placed in an absent without official leave pay status for five (5) or more workdays. (DPM 1605.4(f)(2); 1607.2(f)(4)." On August 5, 2025, Employee filed her Petition for Appeal at OEA.

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<sup>3</sup> OEA Rule § 699.1.

### **Employee's Position**

Employee avers that she was wrongfully terminated because she was on Family Medical Leave (“FMLA”) at the time she was separated from service.<sup>4</sup> Employee explains that in October 2021, she was on leave due to an automobile accident which required her to undergo surgery.<sup>5</sup> She avers that she was out of work for eight (8) months. Employee further cites that she was due to have surgery in July 2022 but found out that she was pregnant. Employee cites that due to complications, her baby was delivered early in November 2022 and was “severely premature.”<sup>6</sup> Employee also cites that her son required surgery and was also in the NICU. Employee cites that this caused her a great deal of stress for which she had to undergo counseling. Employee states she was “sent an email stating to renew [her] FMLA, which [her] doctor filled out the paperwork and returned to her.” Employee notes that during the time that she was going through the process to return the paperwork to the FMLA coordinator, she was told that her child needed brain surgery. Employee cites that it was during this time on November 18, 2023, that she received the notice that she would be terminated.

Employee notes that she was in the hospital with her child until he was discharged in June 2023, and asserts that even though he was finally discharged, her child required assistance given his special needs. Employee cites that her child is now two (2) years old and thriving, but that he still has ongoing medical issues to manage.<sup>7</sup> Employee requests to be returned to work. Employee explains that she really loved her job and worked with DBH for 15 years. She was a lead worker and excelled in her duties and customer service.<sup>8</sup>

### **Agency's Position**

Agency asserts OEA lacks jurisdiction over this matter because Employee's Petition for Appeal (“PFA”) was untimely filed. Agency cites that Employee's Petition should be dismissed because it was filed untimely “by more than one and half years.”<sup>9</sup> Agency further asserts that “Employee requests equitable tolling due to her child's health complications between November 2022 and June 2023,” but this argument is “unavailing because the 30 day PFA deadline is a mandatory claim-processing rule that is not subject to equitable tolling.”<sup>10</sup> Agency further cites that “even if OEA could equitably toll Employee's PFA, the circumstances set forth in Employee's brief do not warrant equitable tolling. Specifically, in her brief, Employee describes that her child experienced health complications between November 2022 through June 2023.” Agency avers that Employee was “removed from her position on November 17, 2023, nearly five months after her child's health complications.”<sup>11</sup> As such, Agency maintains that there is no “temporal nexus to the untimeliness of Employee's PFA, nor does Employee explain how the untimeliness of her PFA reached over *one-and-a-half-years*.” Agency also argues that “even if there were a temporal nexus, Employee still does not explain the more than one-and-a-half year length of delay in filing her

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<sup>4</sup> Employee's Petition for Appeal at Page 4 (August 5, 2025).

<sup>5</sup> Employee's Brief at Page 1 (October 20, 2025).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at Page 2.

<sup>9</sup> Agency's Response to Employee's Brief at Page 1 (November 4, 2025).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at Page 2.

PFA.”<sup>12</sup> Agency also cites that it would be prejudiced if OEA were to apply equitable tolling in this matter, because it would be subject to “significantly increased backpay exposure if Employee were allowed to proceed...”<sup>13</sup> Consequently, Agency asserts that Employee’s Petition must be dismissed as OEA lacks jurisdiction over this matter.

## **Jurisdiction**

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 of the District of Columbia Municipal Regulation (“DCMR”) § 604.1<sup>14</sup>, 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 DCMR Ch. 600 (December 27, 2021), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant 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.<sup>15</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>16</sup>

## ***Filing of Petition for Appeal***

Agency asserts that Employee’s Petition should be dismissed because it was filed over a year and a half after the effective date of termination. Employee does not dispute this late filing claim but cites to personal health issues for her delay. Employee’s termination was effective November 17, 2023, but Employee did not file her Petition for Appeal at OEA until August 5, 2025. OEA has held that a “[d]istrict government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within *thirty (30) calendar days of the effective date of*

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<sup>12</sup> *Id.* at Page 3.

<sup>13</sup> *Id.*

<sup>14</sup> See also. Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

<sup>15</sup> See. *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>16</sup> 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).

*the action being appealed.”<sup>17</sup>* (Emphasis added). The D.C. Court of Appeals in *Yordanos Sium v. Office of State Superintendent of Education*, 218 A.3d 228 (D.C. 2019)<sup>18</sup>, held that the presumption regarding filing deadlines is that they are not jurisdictional, but waivable claims-processing rules. In support of this position, the Court relied heavily on the ruling in *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015) that filing deadlines in particular are quintessential claim-processing rules, which seek only to promote the orderly progress of litigation, and generally do not have jurisdictional force. (citing *Wong*, 135 S.Ct. at 1632 (quoting *Henderson*, 562 U.S. at 435, 131 S.Ct. 1197). In *Sium*, the Court reasoned that even procedural rules codified in statutes are non-jurisdictional in character. It found that if a deadline is contained in a statute **and** its language is mandatory, it *may* be jurisdictional (Emphasis added). The Court held that D.C. Code § 1-606.03(a), which provides that any appeal shall be filed within 30 days of the effective date of the appealed action, meets both requirements. However, it opined that more is required.

Relying on *Mathis*, the D.C. Court of Appeals held that for a filing deadline to be deemed a jurisdictional bar, the traditional tools of statutory construction must also make clear that the legislature intended it to serve this purpose. The D.C. Court of Appeals saw no indication that the D.C. City Council affirmatively sought to curtail OEA’s jurisdiction; therefore, it ruled that the 30-day deadline to file appeals at OEA is not jurisdictional. As a result, OEA cannot dismiss a late-filed appeal outright. However, OEA can dismiss the appeal if the Agency seasonably objects to the untimeliness of Employee’s filing as a defense, as held in *Brewer v. D.C. Office of Employee Appeals*, 163 A.3d 799 (D.C. 2017).

In *Brewer*, the D.C. Court of Appeals held that as a claims-processing rule, a 30-day deadline is subject to equitable tolling. However, in accordance with the *Mathis* holding, claims-processing rules may be tolled (or relaxed or waived) if equity compels such a result (See *Neill v. District of Columbia Public Employee Relations Bd.*, 93 A.3d 229, 238 (D.C.2014), (explaining that claim-processing rules “may be relaxed or waived”). *The Court in Brewer reasoned that equitable tolling turns on balancing the fairness to both parties and that equity aids the vigilant. Therefore, where a timing rule should be tolled turns on (1) whether there was unexplained or undue delay and (2) whether tolling would work an injustice to the other party* (See. *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392 (D.C.1991) and *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015)). (Emphasis added). Furthermore, the Court held that consideration of the importance of ultimate finality in legal proceedings can also be considered when making a determination on tolling a deadline.

In the instant matter, Employee cites that the reason for her untimely filing was due to personal health circumstances she faced with her child between November 2022 and June 2023. Employee explained that her child had been hospitalized until June 2023 due to health complications. However, Employee also noted that she received Agency’s Notice regarding her termination on November 18, 2023, but does not provide any information to suggest that she was precluded from filing her Petition for Appeal in a timeframe contemporaneous with the effective date of her termination. While the undersigned is sympathetic to the challenges Employee faced in the care of her child between the time of November 2022 through June 2023, the record reflects that Employee received the Notice of termination but did not file her Petition for Appeal in a timely manner. As was previously cited, the Court noted in *Brewer*, that considerations of equitable tolling for deadlines

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<sup>17</sup> D.C. Code §1-606.03.

<sup>18</sup> See also. *Kevin Baldwin v DC Office of Employee Appeals and DC Department of Youth Rehabilitation Services*, DC Court of Appeals No. 18-CV-1134 (May 7, 2020).

include a review of the explanation of the delay and whether the tolling would result in prejudice to the other party. Here, Employee filed her Petition nearly 627 days following the effective date of her termination. Further, Agency seasonably objected to the untimeliness of Employee's filing as a defense, explaining that "it would be prejudiced if OEA were to apply equitable tolling in this matter, because it would be subject to "significantly increased backpay exposure if Employee were allowed to proceed". The undersigned agrees that equitable tolling would work an injustice on Agency. As such, I find that Employee's Petition for Appeal was untimely and that this Office lacks jurisdiction over this matter. For the reasons cited above, I find that Employee has not met the burden of proof that OEA has jurisdiction over this matter and this matter must be dismissed.

ORDER

It is hereby **ORDERED** that Agency's Motion to Dismiss is **GRANTED** and the 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