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.: 1601-0020-25
v.	)	
	)	Date of Issuance: August 13, 2026
OFFICE OF	)	
UNIFIED COMMUNICATIONS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as an Electronics Engineer with the Office of Unified Communications ("Agency"). On October 22, 2024, Agency issued an Updated Advance Notice of Proposed Separation charging Employee with violation of Chapter 6-B, Section 1607(f)(3) of the D.C. Municipal Regulations ("DCMR") (attended-related offenses) and § 1607.2(d)(2) (failure/refusal to follow instructions). The charges were based on Employee's unauthorized absences from August 12, 2024, through August 17, 2024. A Hearing Officer conducted an administrative review of the charges and recommended the penalty of removal. Employee's termination became effective on November 26, 2025.[2]

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] *Agency's Answer to Petition for Appeal* (March 14, 2025).

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on January 22, 2025. He argued that Agency's termination action violated the District Personnel Manual ("DPM"); Agency conspired to remove him; and it improperly classified him as being Absent Without Leave ("AWOL"). Therefore, Employee opined that his removal was improper.[3]

In response, Agency contended that Employee's arguments were unfounded. It explained that Employee did not dispute that he was absent from work for five consecutive days, nor did he allege that management was properly notified before Employee took absence from work. Thus, Agency reasoned that the imposed discipline was warranted. Lastly, it submitted that all relevant *Douglas* factors[4] were considered. As a result, Agency requested that its termination action be upheld.[5]

On March 25, 2025, the OEA Administrative Judge ("AJ") issued an order requesting that Employee address whether this Office has jurisdiction over his appeal because of his classification as a term employee and because the petition was filed more than thirty days after the effective date of the removal action.[6] On June 24, 2025, a new AJ issued an order notifying the parties that the matter

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[3] *Petition for Appeal* (January 22, 2025).
[4] The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board ("MSPB") in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters: 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; 3) the employee's past disciplinary record; 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties; 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses; 7) consistency of the penalty with any applicable agency table of penalties; 8) the notoriety of the offense or its impact upon the reputation of the agency; 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; 10) potential for the employee's rehabilitation; 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and 12) the adequacy and effectiveness of alternative sanctions to deter such conduct.
[5] *Agency's Answer* at p. 14.
[6] *Order for Briefs on Jurisdiction* (March 25, 2025). Both parties submitted responses to the order. *See Employee's Answer* (April 18, 2025) and *Agency's Response to March 25, 2025, Order* (April 25, 2025).

was reassigned to her.[7] During a July 8, 2025, status conference, the AJ determined that the issue of jurisdiction remained outstanding and ordered response briefs.[8]

On November 19, 2025, the AJ issued an Order Regarding Jurisdiction and Order for Briefs. She held that Employee successfully completed his probationary period as required under DPM § 209.11. The AJ further determined that Employee's termination was required to be conducted in accordance with Chapter 16 of the DPM, and Employee was afforded appeal rights to OEA. She also ruled that Employee's untimely filing did not preclude review by this Office because it did not prejudice Agency. Consequently, she held that Employee satisfied his burden of proof on the issue of jurisdiction. As a result, the parties were ordered to submit briefs addressing whether Agency had cause for the instant adverse action and whether the penalty of termination was appropriate.[9]

On January 12, 2026, Agency filed a Motion to Dismiss notifying the AJ that it fully rescinded the Final Agency Decision on December 25, 2025. It provided that "[i]nstead, pursuant to his term appointment, Employee's official last day of employment was December 1, 2024." Agency indicated that it was in the process of remitting payment to Employee for back pay based on its rescission of

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[7] *Order Scheduling Status Conference* (June 24, 2025). Former OEA Administrative Judge Hochhauser left the employ of OEA in June of 2025.

[8] *Supplemental Post-Status Conference Order* (July 9, 2025). Employee's contended that he was unable to secure legal representation in a timely matter, which resulted in a late filing to OEA; Agency prevented him from working in a peaceful and respectable work environment; and Agency treated employees of other races in a more favorable manner. Lastly, he reiterated that Agency violated the DPM when it conducted the termination action. As such, Employee requested that the AJ accept his late filing and consider his substantive arguments. *Employee Response to Status Hearing* (July 10, 2025).

In response, Agency contended that Employee's post-probation term appointment did not affect OEA's jurisdiction. It explained that Employee was initially hired into a Career Service, Temporary Employment position in June of 2020; Employee's temporary appointment was converted to a Term Appointment in 2021; the appointment was extended again on October 19, 2023; and Employee's final extension notified him that his term would not exceed December 1, 2024. Thus, Agency reasoned that Employee's probationary period had been met. However, it reiterated that Employee's petition to OEA was untimely and requested that the matter be dismissed on this basis. *Agency's Response to Post-Status Conference Order* (July 15, 2025). Agency filed a Notice of Authority on August 7, 2025, pertinent to its timeliness argument. *See Agency's Notice of Authority* (August 7, 2025).

[9] *Order Regarding Jurisdiction and Order for Briefs* (November 19, 2025). On December 5, 2025, the AJ granted Agency's December 4, 2025, *Motion to Modify Briefing Schedule. See Order Granting Agency's Motion to Modify Briefing Schedule* (December 5, 2025).

the termination action. Consequently, it requested that Employee's appeal be dismissed.[10] Employee filed an Opposition to Agency's Motion to Dismiss on February 6, 2026. He asserted that OEA's jurisdiction was already established on November 25, 2025; Agency previously stipulated that his status as a term employee did not divest this Office of jurisdiction; and Agency was unilaterally attempting to delay the OEA proceedings through "unclear" tactics. Therefore, Employee asked that Agency's motion be denied.[11]

An Initial Decision was issued on March 26, 2026. First, the AJ provided that OEA has consistently held that this Office's jurisdiction is determined by the penalty imposed at the time the appeal is filed. She explained that once jurisdiction has attached, it cannot be divested by an agency's decision to unilaterally amend a penalty unless the employee consents to the divestiture or the agency completely rescinds the action being appealed. Next, the AJ reasoned that because Agency completely rescinded Employee's termination action, OEA was prevented from exercising jurisdiction over his appeal. Additionally, she held that this Office lacks jurisdiction over employees with expired terms. Finally, the AJ concluded that there was no longer an adverse action at issue as defined under 6-B DCMR § 604.1 because Employee's termination was fully rescinded by Agency. As a result, Employee's appeal was dismissed for lack of jurisdiction.[12]

Employee filed a Petition for Review with the OEA Board on May 15, 2026. He argues that the AJ made an error of law by misapplying the relevant D.C. personnel regulations. According to Employee, Agency rescinded the adverse action to avoid a hearing on his substantive arguments. He further asserts that Agency misrepresented his options for appealing the termination action and that new evidence is available that could not have been discovered prior to the closing of the record.

[10] *Agency's Motion to Dismiss* (January 12, 2026).
[11] *Opposition to Motion to Dismiss* (February 6, 2026).
[12] *Initial Decision* (March 26, 2026).

Consequently, Employee asks the Board to reverse the Initial Decision and reinstate him with back pay and benefits.[13]

In response, Agency avers that the AJ properly concluded that OEA was divested of its jurisdiction over Employee's appeal after his termination action was fully rescinded; Employee was reimbursed for all back pay owed as a result of his removal; and there is no longer a final decision at issue over which OEA retains jurisdiction. Additionally, it maintains that Employee's petition was untimely under D.C. Code § 1-606.03 and 6-B DCMR § 604.2. Hence, Agency believes that the AJ erred by permitting Employee's late filing under the doctrine of equitable tolling. Notwithstanding, it requests that his petition be denied.[14]

<u>Discussion</u>

This Office's jurisdiction is conferred by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. 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 Chapter 6-B, Section 604.1 of the DCMR, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting the following:

> (a) A performance rating which results in removal of the employee;
> (b) An adverse action for cause which results in removal;
> (c) A reduction in grade;
> (d) A suspension for ten (10) days or more;
> (e) A reduction-in-force; or
> (f) A placement on enforced leave for ten (10) days or more

[13] *Petition for Review* (May 15, 2026).

[14] *Answer to Petition for Review* (June 12, 2025). Employee filed a reply to Agency's answer on June 22, 2025, in which he argues that the AJ erred in concluding that the rescission of the termination action divested OEA of jurisdiction; Agency's did not provide the complete relief requested; Employee's term status did not affect his arguments relative to discrimination, retaliation, and procedural violations; and the AJ made the correct ruling concerning his late filing. Thus, Employee reasons that the matter should be remanded to the AJ for a hearing on the merits of his arguments. *Employee's Response to Agency's Answer to Petition for Review* (June 22, 2026).

Under OEA Rule § 631.2, "[t]he employee shall have the burden of proof as to issues of jurisdiction. OEA Rule 631.1 goes on to provide that 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." In accordance with the holding in *Robbins v. D.C. Public Schools*, OEA Matter No. 1601-0213-11R16, *Opinion and Order on Petition for Review* (January 30, 2018) this Office has no authority to review issues beyond its jurisdiction.[15]

As the AJ held, OEA's jurisdiction is determined by the penalty imposed by an agency at the time the appeal is filed.[16] In *Davis v. Department of Motor Vehicles*, OEA Matter No, 1601-0124-15 (January 31, 2017), this Office ruled that once jurisdiction 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 if the agency *completely rescinds* the action being appealed. (emphasis added).[17] However, the District of Columbia Court of Appeals in *Settlemire v. District of Columbia Office of Employee Appeals*, 898 A.2d 902 (D.C. 2006), ruled that "it is well-settled that, while an appeal is pending before this Office, an event that renders relief impossible or unnecessary also renders that appeal moot."

In this case, Employee's initial appeal from Agency's final notice of adverse action met the threshold for jurisdiction under D.C. Code § 1-606.03(a). However, Agency's Motion to Dismiss provided that it fully rescinded the termination action against Employee. Specifically, it provided that on December 25, 2025, "OUC rescinded its Final Agency Decision which terminated Employee."

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[15] *See also Employee v. D.C. Fire & Medical Emergency Services*, OEA Matter No. 1601-0080-24 (September 24, 2024).
[16] *Royal v. Metropolitan Police Department*, OEA Matter No. 1601-0003-10 (March 28, 2013). *See also Hagan v. Department of the Army*, 99 M.S.P.R. 313 (2005).
[17] *See also Himmel v. Department of Justice*, 6 M.S.P.R. 484 (June 2, 1981).

Additionally, Agency noted that in lieu of termination, Employee would remain employed through the end of his term appointment on December 1, 2024. Agency further notified this Office on March 23, 2026, that payment was remitted to Employee on March 11, 2026, for back pay owed as a result of the rescission. Therefore, the restitution of lost wages, benefits, and reinstatement cannot be granted by this Office because Employee has been made whole as a result of the removal action. While Employee argues that OEA's jurisdiction could not be divested by Agency's unliteral actions, after Agency fully rescinded Employee's termination, there was no meaningful relief that he could seek before this Office. Accordingly, the AJ was correct in ruling that OEA was divested from its jurisdiction over this matter.[18] Consequently, Employee's appeal must be dismissed.

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[18] *See Brooks v. D.C. Public Schools*, OEA Matter No. J-0136-08, *Opinion and Order on Petition for Review* (July 30, 2010) and *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)(finding that OEA may not adjudicate appeals from employees serving in expired term appointments).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DISMISSED**.

FOR THE BOARD:

____

Pia Winston, Chair

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LaShon Adams

____

Jeanne Moorehead

____

Lafayette Barnes

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.