

**DISTRICT OF COLUMBIA
OFFICE OF EMPLOYEE APPEALS**

NOTICE OF PUBLIC MEETING

The District of Columbia Office of Employee Appeals will hold a meeting on April 7, 2022, at 11:00 a.m. The Board will meet remotely. Below is the agenda for the meeting.

Members of the public are welcome to observe the meeting. In order to attend the meeting, please visit:

<https://dcnet.webex.com/dcnet/onstage/g.php?MTID=e0ca51bef168bc402bff9d3b499058066>

Event password: board

We recommend logging in ten (10) minutes before the meeting starts. In order to access Webex, laptop or desktop computer users must use Google Chrome, Firefox, or Microsoft Edge Browsers.

Smartphone/Tablets or iPad user must first go to the App Store, download the Webex App (Cisco Webex Meetings), enter the Access Code, and enter your name, email address, and click Join. It is recommended that a laptop or desktop computer be utilized for this platform.

Your computer, tablet, or smartphone's built-in speaker and microphone will be used in the virtual meeting unless you use a headset. Headsets provide better sound quality and privacy.

If you do not have access to the internet, please call-in toll number (US/Canada) 1-650-479-3208, Access code: 2319 777 7447

Questions about the meeting may be directed to wynter.clarke@dc.gov.

Agenda

D.C. OFFICE OF EMPLOYEE APPEALS ("OEA") BOARD MEETING

Thursday, April 7, 2022 at 11:00 a.m.

Location: Virtual Meeting via Webex

- I. Call to Order**
- II. Ascertainment of Quorum**
- III. Adoption of Agenda**
- IV. Minutes Reviewed from Previous Meeting**
- V. New Business**
 - A. Public Comments on Petitions for Review**
 - B. Summary of Cases**

1. Employee v. Department of Public Works, OEA Matter No. 1601-0009-20 – Employee worked as a Parking Enforcement Officer with the Department of Public Works (“Agency”). On October 22, 2019, Agency issued Employee a Final Decision on Proposed Removal. Employee was terminated based on charges of Conduct Prejudicial to the District Government (On-Duty Conduct that Employee Should Reasonably Know is a Violation of the Law); Misrepresentation; Knowingly and Willingly Making an Incorrect Entry on an Official Record; Reporting False or Misleading Material Information; and Conduct Prejudicial to the District Government (Assaulting, Fighting, Inflicting Bodily Harm while on District Property or While on Duty). The charges stemmed from a May 17, 2019 incident wherein Employee was accused of assaulting a citizen while on duty. The effective date of her termination was October 25, 2019.

Employee filed a Petition for Appeal with the Office of Employee Appeals on November 19, 2019. She denied each charge against her and claimed that Agency failed to meet its burden of proof in this matter. In response, Agency contended that Employee’s arguments were unfounded, without merit, and that discipline was both warranted and appropriate under the circumstances. Therefore, it requested that OEA uphold its termination action. The AJ issued an Order on Jurisdiction Regarding Retaliation on January 22, 2020. In his order, the AJ held that OEA may consider evidence of Employee’s claim that her termination was a pretext manufactured by Agency. He explained that this Office lacked original jurisdiction over complaints of unlawful discrimination because those claims are generally reserved for the D.C. Office of Human Rights. However, the AJ reasoned that the D.C. Court of Appeals in *Raphael v. Okyiri* concluded that OEA retained the jurisdictional authority to address an employee’s retaliation claim as a cognizable defense in an adverse action that was not a Reduction-in-Force. Consequently, the AJ held that OEA retained the jurisdictional authority to address Employee’s claim.

On January 28, 2021, Agency filed a Motion for Certification of Interlocutory Appeal to the OEA Board and Request for Stay of Proceedings. It reiterated its previous contention that OEA was not the proper venue to adjudicate Employee’s claims of unlawful discrimination/harassment and retaliation because the appropriate venue for addressing these arguments was OHR. On January 29, 2021, the AJ issued an Order Granting Agency’s Motion for Certification of Interlocutory Appeal to the OEA Board. On March 25, 2021, the OEA Board issued an Opinion and Order on Motion for Interlocutory Appeal. It denied Agency’s motion and held that the AJ was permitted to address Employee’s complaints of harassment and discrimination as they related to the underlying charges surrounding her termination. Therefore, an evidentiary hearing was held on June 3rd and 4th of 2021, wherein the parties presented documentary and testimonial evidence in support of their positions.

The AJ issued an Initial Decision on November 16, 2021. As it related to the charges of conduct that an employee should reasonably know is a violation of law and assaulting/fighting while on duty, the AJ concluded that Agency established the requisite cause to discipline Employee. He explained that the interaction between Employee and the citizen was captured on surveillance footage. According to the AJ, the testimonial evidence and video footage depicted a confrontation between Employee and the citizen wherein Employee shoved/pushed the citizen in his back, causing him to bend forward. The AJ disagreed with Employee’s self-defense argument, noting that neither the citizen’s elbow nor chest made physical contact with Employee’s person during the incident. As such, he opined that these charges were supported by the record.

Concerning the remaining charges of misrepresentation, making an incorrect entry on an official record, and reporting false or misleading material information, the AJ held that Agency met its burden of proof in establishing each cause of action against Employee. He provided that following the May 17, 2019 incident, Employee filed a police report with the Metropolitan Police Department, an internal incident report with Agency, and a statement to the Office of Risk Management

regarding a workers' compensation claim. According to the AJ, Employee failed to indicate that she shoved or pushed the citizen during the altercation on any of the aforementioned documents. He concluded that Employee provided conflicting testimony during the evidentiary hearing because Employee testified on direct examination that she pushed the citizen after he pushed her, then denied on cross-examination that she never shoved him. Thus, the AJ reasoned that Employee submitted false statements to the police department, Agency, and ORM by knowingly providing untrue information – that Employee did not assault the citizen during the May 17th altercation – in the three reports that directly contradicted the video and witness accounts.

Lastly, the AJ held that Employee's retaliation claims were not supported by the record. He provided that there was no casual connection between Employee's harassment claim and her assault on a citizen while on duty. Since termination was a permissible penalty for the first offense for each charge levied against Employee, the AJ concluded that Agency did not abuse its discretion in initiating its termination action. Therefore, Employee's termination was upheld.

Employee filed a Petition for Review with the OEA Board on December 20, 2021. She argues that the Initial Decision should be reversed because the AJ admitted unreliable and prejudicial hearsay evidence; the AJ failed to make proper credibility determinations and findings on material facts; Agency was erroneously permitted to impeach Employee's testimony with a tape recording of her workers' compensation claim; and the AJ failed to address material issues about the probative value of the video depicting the May 17th incident. Additionally, she contends that the AJ improperly allowed Agency to impeach Employee with a pre-hearing conference statement. Further, Employee avers that the AJ erred in concluding that Agency met its burden of proof in establishing that she was guilty of the charges against her. Consequently, she requests that the Initial Decision be reversed and that her Petition for Review be granted.

Agency filed its response on January 24, 2022. It maintains that the AJ did not admit unreliable or prejudicial hearsay evidence during the evidentiary hearing. Agency believes that the AJ made the proper credibility determinations and that he did not err in permitting Employee to be impeached with a recorded statement from ORM. Additionally, it argues that the Initial Decision adequately addressed material issues pertinent to the probative value of the surveillance video depicting the altercation. According to Agency, Employee could be impeached by her prehearing conference statement because her testimony during the evidentiary hearing directly contradicted the representations made in the document. It further asserts that the AJ correctly considered all evidence that Employee's termination was retaliatory. Lastly, Agency opines that it properly met its burden of proof in establishing the charges against Employee. Therefore, it requests that Employee's Petition for Review be denied.

C. Deliberations – This portion of the meeting will be closed to the public for deliberations in accordance with D.C. Official Code § 2-575(b)(13).

D. Open Portion Resumes

E. Final Votes on Cases

F. Public Comments

VI. Adjournment

“This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.”