

**DISTRICT OF COLUMBIA
OFFICE OF EMPLOYEE APPEALS**

NOTICE OF PUBLIC MEETING

The District of Columbia Office of Employee Appeals will hold a meeting on September 18, 2025, at 9:30 a.m. The Board will meet remotely. Below is the agenda for the meeting.

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

Agenda

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

Thursday, September 18, 2025, at 9:30 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. D.C. Department of General Services, OEA Matter No. 1601-0079-22**
– Employee worked as Special Police Officer with the District of Columbia Department of General Services ("Agency"). On July 25, 2022, Agency issued a final notice of removal to Employee. It charged him with neglect of duty pursuant to District Personnel Manual ("DPM") § 1607.2(e). According to Agency, while Employee was on duty, he was assigned to post #9 at the District of Columbia National Guard ("DCNG") building. At this assigned fixed post, Employee was required to remain on the post until he was relieved of his duties by another officer. However, Agency alleged that twice on February

21, 2022, Employee left his post without being relieved. According to Agency, the second time that Employee abandoned his post resulted in a security breach with an unauthorized person gaining access to the building. It was Agency's position that this breach put the building and its occupants at risk, and it required that the entire DCNG be placed in a lockdown mode. As a result, Agency terminated Employee from his position.

On August 22, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). Employee argued that he made a request over the radio to be relieved to use the restroom. However, he alleged that he did not receive a response, so he left his post, which he maintained that he did not know was not allowed. According to Employee, his termination was unwarranted and amounted to disparate treatment because similarly situated Special Police Officers who were also charged with neglect of duty received less severe penalties. Additionally, he posited that the *Douglas* factors were not properly considered by Agency. Therefore, he requested that he be reinstated to his position and that Agency reimburse him for back pay and benefits.

On November 10, 2022, Agency filed its Answer to Employee's Petition for Appeal. It argued that as an armed Special Police Officer, Employee was required to maintain his post while on duty until he was relieved. It explained that Employee's abandonment of his post allowed an unknown person to wander into the facility, resulting in a lockdown. Agency contended that Employee's duties included screening individuals who entered the facility, in addition to protecting the safety of the workers within the facility. It opined that pursuant to DPM § 1607(e) the Table of Illustrative Actions, Employee was subject to removal for the first offense of abandoning his post on February 21, 2022, as the penalty ranges from counseling up to removal. It asserted that it did consider the *Douglas* factors and concluded that the security breach and lockdown that resulted from Employee's abandonment were so egregious that termination was warranted. As a result, it requested that Employee's termination be upheld.

After conducting a two-day evidentiary hearing, the OEA Administrative Judge ("AJ") issued an Initial Decision on April 14, 2025. He held that Agency established cause for Employee's failure to carry out official duties pursuant to the neglect of duty charge. The AJ found that the testimonies provided by witnesses Wilhelm, Leo, and Godwin were credible and contradicted Employee's assertions. He also found the video footage of Employee abandoning his post and footage of the intruder breaching his post to be clear and consistent with witness testimony. The AJ held that Employee abandoning his post was egregious because his express duty was to screen incoming people and provide armed security to the DCNG facility. As for Employee's disparate treatment argument, the AJ held that none of the comparators provided by Employee were similarly situated given the nature of Employee's actions. The AJ also opined that removal was within the range of penalties in the Table of Illustrative Actions and that Agency considered relevant factors before rendering its decision to terminate Employee. Consequently, the AJ upheld Agency's termination action.

Employee disagreed with the Initial Decision and filed a Petition for Review on May 23, 2025. He argues that Agency erroneously alleged that he had a duty to be relieved before leaving his post for breaks. Employee asserts that there was no post order requiring such, and he claims that he was not provided with training. It is Employee's position that he did not wait for another officer to relieve him because, based on past practice, he knew that the officers in post #1A were monitoring his post via video surveillance. Employee also argues that the AJ erroneously held that Agency's witnesses were credible and that

the *Douglas* factors were properly considered. As a result, he requests that the Board reverse the Initial Decision.

On July 10, 2025, Agency filed its Opposition to Employee's Petition for Review. It opines that Employee neglected to perform his job duties by leaving his post unmanned twice during one shift. Agency contends that this is untenable behavior for a Special Police Officer whose job is to secure the building to which he was assigned. It explains that the video and audio recordings clearly demonstrate Employee's neglect of duty. Finally, Agency contends that the AJ's credibility determinations were proper. As a result, it requests that Employee's Petition for Review be denied.

2. **Employee v. D.C. Office of the Chief Technology Officer, OEA Matter No. 1601-0019-25** – Employee worked as an Information Technology Specialist with the D.C. Office of the Chief Technology Officer ("Agency"). On December 5, 2024, Agency issued a Proposed Notice of Enforced Leave after it obtained reliable evidence that Employee had been "indicted on, arrested for, charged with, or convicted of a felony charge..." in accordance with Chapter 16, Section 1617.3(c) of the D.C. Municipal Regulations ("DCMR"). Specifically, Employee was charged with four felony counts of sex offenses in the District Court of Maryland for Montgomery County. Agency subsequently issued its final decision placing him on enforced leave effective January 9, 2025.

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on January 14, 2025. He argued that the criminal charges levied against him were of a personal nature that had nothing to do with his duties as a District employee. Employee further submitted that he was wrongfully punished based on unfounded accusations and not because of work performance issues or a criminal conviction. Finally, he highlighted that the regulations governing enforced leave were discretionary, not mandatory. As a result, Employee asked that Agency return him to full duty status.

Agency filed its answer on February 13, 2025. It asserted that it fully complied with 6-B DCMR § 1617 and Active Issuance I-202-1017 in placing Employee on enforced leave. Agency explained that Employee was placed on leave following his arrest in the State of Maryland for felony sex crimes. It expressed that Employee conceded that he was both arrested and charged criminally. Further, Agency opined that given the nature of the allegations and the court-mandated prohibition on contact with minors, Employee's presence at work would be inappropriate. Lastly, it reasoned that under 6-B DCMR § 1607.2(a)(3), Employee's placement on enforced leave was the only appropriate course of action. Thus, it requested that the leave action be sustained.

An OEA Administrative Judge ("AJ") was assigned to the matter in February of 2025. The parties were then ordered to submit legal briefs addressing whether Employee's placement on enforced leave was taken in accordance with District laws and whether the penalty was appropriate under the circumstances. In his brief, Employee argued that the enforced leave action was unwarranted, especially in light of his service to the District government for over twenty-five years. He reiterated that the Maryland criminal charges were of a personal nature and had no bearing on his ability to perform the functions of his position. Employee also noted that he did not receive Agency's December 5, 2024, notice until December 12, 2024, after the United States Marshals confiscated his mailbox key. Additionally, Employee opined that the enforced leave action constituted double jeopardy because the inability to receive wages during this time imposed a significant financial burden on him. Therefore, he requested that Agency reconsider its decision to place him on enforced leave. Alternatively, Employee suggested that Agency could place

him in a fully remote capacity or deplete his annual leave.

The AJ issued an Initial Decision on May 6, 2025. First, she highlighted that under 6-B DCMR § 1617.3(c), an agency can place an employee on enforced leave when they have been indicted on, arrested for, charged with, or convicted of a felony charge. According to the AJ, the record demonstrated that Employee was arrested and later indicted on four felony charges in the State of Maryland as evidenced by the District Court of Maryland for Montgomery County's initial arrest affidavit, Employee's criminal records in the District Court of Maryland for Montgomery County, and the records from the Circuit Court of Maryland for Montgomery County. Thus, she ruled that both the arrest affidavit and Employee's own admission of his arrest could be relied upon in placing him on enforced leave.

Next, the AJ dismissed Employee's arguments regarding alternative penalties like remote work or depletion of his annual leave as irrelevant to Agency's enforced leave action. Because Employee was arrested and charged with four felonies, the AJ assessed that Agency was within its authority to place him on enforced leave in accordance with DCMR § 1617.3. As a result, she held that the Agency's actions were conducted in accordance with all applicable laws, rules, and regulations.

Employee subsequently filed a Petition for Review with the OEA Board on May 22, 2025. He requests that the Initial Decision be reconsidered because the underlying basis of the enforced leave action is no longer applicable. Specifically, Employee submits that as of May 21, 2025, the State of Maryland has "effectively lifted all the charges previously levied against me." According to Employee, a jury trial was conducted in Montgomery County, Maryland, wherein he was found not guilty on all counts. Thus, he reasons that the enforced leave action is moot in light of the verdict. Consequently, Employee asks that the enforced leave action be rescinded.

In response, Agency filed a Notice of Plaintiff's Defective Petition for Review. It contends that Employee's filing makes no reference to the record relied upon by the AJ; he fails to provide a condition under which a petition can be granted pursuant to OEA Rule 637.4; and Employee does not contest the AJ's interpretation or findings relative to the enforced leave action. Additionally, Agency suggests that Employee's purported acquittal of the criminal charges has no bearing on whether his placement on enforced leave should be upheld. Therefore, it believes that the Initial Decision is based on substantial evidence.

3. **Employee v. D.C. Fire & Medical Services Department, OEA Matter No. 1601-0050-23R25** — This matter was previously before the Board. Employee worked as a Firefighter/Emergency Medical Technician ("FF/EMT") with the Department of Fire and Emergency Medical Services ("Agency"). On December 30, 2020, he was arrested by the Prince George's County Police Department for possession of a stolen handgun, possession of a loaded handgun on his person, and possession of a loaded handgun in a vehicle, hereinafter ("Case No. U-21-087"). On March 14, 2021, Employee was arrested again in Prince George's county for second degree assault, acting in a disorderly manner, resisting arrest, and obstructing and hindering a police officer, hereinafter ("Case No. U-21-154").

As a result of Case No. U-21-087, Employee was charged with any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law; any act which constitutes a criminal offense whether or not the act results in a conviction; and any on-duty or employment-related act or omission

that interferes with the efficiency or integrity of government operations to include: neglect of duty. As a result of Case No. U-21-154, Employee was similarly charged with any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law; any act which constitutes a criminal offense whether or not the act results in a conviction; and any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations to include: neglect of duty. The effective date of Employee's termination was June 24, 2023.

Agency subsequently sought review of the March 15, 2024, Initial Decision with the OEA Board. On January 16, 2025, the Board issued an Opinion and Order on Petition for Review remanding the matter to the AJ. It provided that current case law dictated that Agency's use of the 2012 DPM was proper; thus, the AJ's finding to the contrary constituted a reversible error. Additionally, the Board concluded that the AJ failed to make findings related to how, or if, Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties. It noted that Article VII, Section 2 of Agency's Order Book did not require a nexus between Employee's off-duty conduct and his position, and members were not required to be on duty as a prerequisite to imposing discipline. Since the record was devoid of the aforementioned analyses based on the correct regulations, the Board could not determine if the Initial Decision was based on substantial evidence. As a result, the matter was remanded to be adjudicated based on an analysis of the 2012 regulations and Agency's Order Book.

The AJ issued an Amended Initial Decision on Remand on May 30, 2025. In measuring whether Agency's termination action was taken in accordance with the 2012 DPM and Article VII, Section 2 of the Order Book, the AJ held that while Employee's misconduct on December 30, 2020, and March 14, 2021, occurred while he was off duty, his actions nonetheless adversely and materially affected Agency operations. She assessed that Employee was in possession of a loaded handgun; he failed to inform officers that he was in possession of the weapon; and he acted in a disorderly manner when resisting arrest during the March 14, 2021, incident. Thus, she ruled that Employee's actions directly conflicted with Agency's mission and core values of bravery, accountability, safety, and integrity. The AJ further noted that Article VII did not require a nexus between Employee's conduct and his duties as an FF/EMT. As such, she held that Agency met its burden of proof in establishing the charges of any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law and neglect of duty. Finally, she concluded that termination was within the range of penalties permitted by law. Consequently, Employee's removal was upheld on remand.

Employee filed a Petition for Review with the OEA Board on June 5, 2025. He presents many of the same arguments previously submitted to the AJ. Employee further espouses that his petition should be granted because the AJ's rulings are not based on substantial evidence; new and material evidence is available that was unavailable when the record was closed; and the AJ did not address all issues of law and fact properly raised on appeal. According to Employee, the AJ erred in concluding that he failed to mail a physical copy of his legal brief in response to the February 19, 2025, briefing order. Accordingly, he believes that the matter should be remanded again for the AJ to reconsider his substantive claims because his arguments were not considered in her remand decision. Employee also requests that the Board discipline the AJ for failing to render a decision on the entire record.

In response, Agency asserts that Employee's petition to the Board was untimely under OEA Rule 637.2. It submits that he offers no compelling basis for disregarding his duty to file a petition for review one day beyond the deadline. Agency highlights that while Employee's courtesy email filing of his brief on remand was not considered in the April 30, 2025, remand decision, the AJ corrected the administrative mistake and rendered an Amended Decision on Remand which considered Employee's substantive arguments. Consequently, it opines that the Amended Decision on Remand is based on substantial evidence.

4. Employee v. Metropolitan Police Department, OEA Matter No. 1601-0072-22R23

— This matter was previously before the Board. Employee worked as a CCTV Evidence Specialist with the Metropolitan Police Department ("Agency"). Employee was served with a Fifteen-Day Advanced Notice of Proposed Adverse Action based on charges of conduct prejudicial to the District government; conduct that employee should reasonably know is a violation of the law; and off-duty conduct that adversely affects the employee's job performance or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position. Agency's notice initially proposed a thirty-day suspension, but its final decision reduced the imposed penalty to a fifteen-day suspension with seven days held in abeyance. Thereafter, Agency unilaterally rescinded the seven days held in abeyance and updated Employee's records to reflect that the final imposed discipline was an eight-day suspension. Employee served the suspension from September 6, 2022, through September 15, 2022.

The Office of Employee Appeals ("OEA") Administrative Judge ("AJ") issued an Initial Decision on January 26, 2023, finding that OEA lacked jurisdiction over Employee's appeal. In support thereof, he highlighted OEA's governing statute, Title 1, Chapter 6, Subchapter VI of the D.C. Code (2001), which provided *inter alia* that an employee may appeal to this Office suspensions for ten days or more. The AJ noted that the adverse action in this case was rescinded with Employee only having suffered an eight-day suspension. Hence, the AJ concluded that at best, the current appeal constituted a corrective action. Consequently, Employee's appeal was dismissed.

On Petition for Review, the OEA Board ruled that the Initial Decision was not based on substantial evidence. It provided that Employee's suspension was unilaterally reduced nearly four months after Agency issued the final notice of adverse action; there was no evidence in the record to demonstrate that Employee consented to the reduction of the proposed penalty; Agency's subsequent decision to reduce the imposed penalty after Employee filed his petition with OEA could not be used as a basis for denying jurisdiction over the current appeal; and Agency's final notice of adverse action met the threshold for jurisdiction in accordance with D.C. Code § 1-606.03(a). Therefore, the matter was remanded to the AJ for adjudication on its merits.

The AJ held a status conference on September 21, 2023. The parties were subsequently ordered to submit briefs addressing whether Agency complied with all applicable laws, rules, and regulations when it suspended Employee for eight days with seven days held in abeyance. Agency's brief argued that Employee was disciplined for cause because he did not dispute the underlying misconduct that formed the basis of the adverse action. According to Agency, it was undisputed that Employee violated Virginia Code § 46.2-862 (Reckless Driving) on July 13, 2015, when he was issued a Virginia Uniform Summons for driving 106 miles per hour ("mph") in a 70-mph zone. It further provided that it was undisputed that Employee was arrested on the associated contempt of court capias warrant by the Metropolitan Washington Airports Authority Police Department on November 11, 2015. Plus, Employee was later found guilty of reckless driving on

January 27, 2016, in Smyth County District Court. Thus, it reasoned that Employee's actions constituted conduct that an employee should reasonably have known is a violation of the law and conduct prejudicial to the District government. Finally, Agency opined that the imposed suspension was warranted based on an assessment of the *Douglas* factors and the Table of Illustrative Actions. As a result, it requested that the AJ sustain Employee's suspension.

In response, Employee contended that his off-duty conduct did not adversely affect his job performance, trustworthiness, or Agency's mission, citing his exemplary work performance in the execution of his duties. He asserted that his suspension violated the federal statute of limitations for initiating an adverse action because the arrest occurred over seven years prior to Agency issuing its Advanced Notice of Proposed Adverse Action. Additionally, Employee believed that Agency failed in its duty to orient or train him on the reporting requirements related to arrests and criminal convictions for civilian employees. According to him, Agency's suspension action also constituted double jeopardy.

As it related to the penalty, Employee opined that Agency was not reasonable, fair, or consistent in its discipline and that it erred by failing to institute progressive discipline. He further claimed that Agency engaged in discrimination by purposefully waiting until he turned forty years old to initiate the suspension action. Lastly, Employee submitted that his off-duty conduct was not a willful violation of any law or regulation. Consequently, he requested compensation for lost time, work benefits, medical costs, and damages suffered as a result of Agency's suspension action.

The AJ issued an Initial Decision on Remand on May 13, 2025. Concerning Employee's claim of double jeopardy, the AJ clarified that this legal theory was derived from the Fifth Amendment of the U.S. Constitution prohibiting repeated litigation of criminal matters involving the same or a similar offense. He noted that Agency's adverse action was a civil matter, therefore this concept did not apply to the instant appeal. The AJ went on to explain that Employee may have conflated double jeopardy with the concept of res judicata or claim preclusion, which also failed because the State of Virginia was the opposing party in the criminal matter, not Agency, and because the charges in Virginia were criminal, whereas the adverse action at hand was a civil matter.

He also found Employee's federal statute of limitation argument disingenuous because Agency only discovered his misconduct in 2022 after the Internal Affairs Department instituted its own investigation which ultimately led to the suspension action. Moreover, the AJ concluded that Agency's General Orders provided guidelines for all civilian employees which included the requirement that all members familiarize themselves with all governing regulations. As it related to the substantive charges, he ruled that Employee admitted to the salient facts that were the subject of the instant adverse action. Thus, it was the AJ's position that Employee's admission to the underlying conduct was sufficient to meet Agency's burden of proof. Lastly, he concluded that the imposed eight-day suspension was within the range allowed by law. Therefore, Agency's adverse action was upheld.

Employee filed a Petition for Review with the OEA Board on July 16, 2025. He argues that Agency violated D.C. Code § 12-301 by waiting seven years to initiate discipline against him. Employee also believes that Agency ran afoul of the federal statute of limitations for enforcing government actions. He further submits that Agency committed a reversible error by failing to adhere to the requirements of Chapter 6-B, Sections 406.1, 415.3, and 415.4 of the D.C. Municipal Regulations ("DCMR"), which govern enhanced

suitability screenings for District employees. As a result, Employee believes that the Initial Decision is contrary to law and requests that the Petition for Review be granted.

Agency challenges each of Employee's arguments and maintains that there is no evidence to demonstrate that he held a safety, security, or protection sensitive position such that frequent background checks were required. It further asserts that there was no statute of limitations violation in commencing the instant adverse action because both D.C. Code § 12-301 and the statutory timelines for initiating civil government actions are inapplicable to Employee's administrative discipline. Thus, Agency believes that it acted timely when it first learned of Employee's misconduct. It reiterates that Employee admitted to all of the misconduct underlying the adverse action, so the eight-day suspension was both warranted and reasonable under the circumstances. Consequently, it asks that the petition be denied.

C. Deliberations – This portion of the meeting will be closed to the public for deliberations in accordance with D.C. 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.”