

## **OFFICE OF EMPLOYEE APPEALS**

### **NOTICE OF FINAL RULEMAKING**

The Board of the Office of Employee Appeals (Board), in accordance with § 602 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1978 (D.C. Law 2-139; D.C. Official Code § 1-606.02(a)(5) (2012 Repl.)), and § 2 of the Medical Marijuana Program Patient Employment Protection Amendment Act of 2020, effective April 27, 2021 (D.C. Law 23-276; D.C. Official Code §§ 1-606.03a and 1-615.03a), hereby gives notice of final rulemaking action amending Chapter 6 (Rules and Regulations of the Office of Employee Appeals) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR).

These rules will amend Chapter 6 in its entirety. The purpose of these rules is to: (1) streamline the adjudication procedures for matters before the Office of Employee Appeals (OEA); (2) clarify the rules to present an understandable road map for adjudication before OEA; and (3) establish procedural rules to govern safety-sensitive designation appeals.

A Notice of Proposed Rulemaking was published in the *District of Columbia Register* on November 26, 2021, at 68 DCR 012473. There were no comments filed in response to the Proposed Rulemaking Notice and no substantive changes have been made since the rules were published as proposed. The OEA Board adopted these rules as final on December 27, 2021.

**The citation for the Office of Employee Appeals Rules is 6-B DCMR Ch. 600, et seq.**

**Chapter 6, RULES AND REGULATIONS OF THE OFFICE OF EMPLOYEE APPEALS, of Subtitle B, GOVERNMENT PERSONNEL, of Title 6, PERSONNEL, of the District of Columbia Municipal Regulations is amended to read as follows:**

#### **600            GENERAL**

600.1            The Office of Employee Appeals (Office) is an independent administrative adjudicatory agency created by the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-606.01 *et seq.*) (2016 Repl. & 2019 Supp.). The jurisdiction of the Office is set forth in Rule 604.

**601 ORGANIZATIONAL STRUCTURE**

- 601.1 The Board of the Office (Board) is composed of five (5) members appointed by the Mayor and confirmed by the District of Columbia Council. Three (3) members of the Board shall constitute a quorum for the transaction of official business and the issuance of rules and regulations.
- 601.2 The Mayor designates a Chairperson of the Board to serve as the Chief Executive of the Office.
- 601.3 The Mayor designates a Vice Chairperson of the Board. In the absence or disability of the Chairperson, or when the position of Chairperson is vacant, the Vice Chairperson performs the functions vested in the Chairperson.
- 601.4 The Executive Director is the administrator of the Office and serves as its chief personnel officer.
- 601.5 The General Counsel, with the assistance of the Deputy General Counsel, provides legal advice to the Board and the Office, prepares opinions and orders as directed by the Board, assists in the enforcement of orders pursuant to law, and represents the Office before the Courts.
- 601.6 Administrative Judges, subject to the provisions of this chapter, adjudicate and mediate appeals filed before the Office.

**602 SCOPE OF RULES**

- 602.1 These rules govern the procedure for deciding cases filed before the Office. These rules shall be applied to promote justice, fairness, and economy.
- 602.2 These rules shall apply to all appeals filed on or after the effective date of these rules and to all appeals then pending final disposition in the Office.
- 602.3 The Board may revoke or amend a rule as it applies generally to all cases in accordance with applicable procedures of the District of Columbia Administrative Procedure Act. The Board or an Administrative Judge may waive a rule in an individual case for good cause shown, if application of the rule is not required by statute.
- 602.4 In the event of a conflict between these rules and a provision of a statute, the statutory provision shall govern. In the event of a conflict between these rules and rules or regulations adopted by another District agency, department, office or board, these rules shall govern.

**603 COMPUTATION OF TIME**

603.1 In computing the number of days allowed for complying with any deadline as instructed by an Administrative Judge, the first day counted is the day after the event from which the time period begins to run. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period shall be extended to the end of the next business day.

**604 JURISDICTION**

604.1 Except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01 *et seq.* (2016 Repl. & 2019 Supp.)) or § 604.3, any District of Columbia government employee may appeal a final agency decision affecting:

- (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.

604.2 An appeal filed pursuant to § 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action.

604.3 In accordance with § 2 of the Medical Marijuana Program Patient Employment Protection Amendment Act of 2020, effective April 27, 2021 (D.C. Law 23-276; D.C. Official Code §§ 1-606.03a and 1-615.03a), an employee has the right to appeal the designation of the employee's position as safety-sensitive under the following circumstances:

- (a) The employee is in a position designated as safety sensitive;
- (b) Within forty-five (45) business days after the employee receives the notification of rights;
- (c) Within forty-five (45) business days after an employee becomes a qualifying patient; or

- (d) Within forty-five (45) business days after the employee receives notice that the employee's position will be newly designated as safety sensitive.

604.4 An appeal filed pursuant to § 604.3 must be filed within thirty (30) calendar days after issuance of the personnel authority's determination.

604.5 An employee may not file an appeal in accordance with § 604.3 solely because:

- (a) The employee failed a job-related drug test; or
- (b) The employee is facing an adverse action related to the employee's failure to pass a job-related drug test.

604.6 An employee may not file an appeal in accordance with § 604.3 if the position is subject to random drug testing under federal law or as a condition of federal funding.

## **605 NOTICE OF APPEAL RIGHTS**

605.1 When an agency issues a final decision to an employee on a matter appealable to the Office pursuant to §604.1, the agency shall at the same time provide the employee with a written copy of the following:

- (a) The Employee's right to appeal to the Office;
- (b) The rules of the Office;
- (c) The appeal form of the Office;
- (d) The current address of the Office;
- (e) Notice of applicable rights to appeal under a negotiated review procedure (if applicable); and
- (f) Notice of the right to representation by a lawyer or other representative authorized by the rules.

## **606 NOTICE AND PROCEDURAL REQUIREMENTS FOR SAFETY-SENSITIVE DESIGNATION APPEALS**

606.1 If a position is designated by the personnel authority as safety-sensitive, the agency shall:

- (a) Include the designation in any description of the position, including a job description utilized for hiring or recruitment; and

- (b) Provide written notice of the employee's rights, including:
  - (1) Employee's right to appeal the determination of the personnel authority denying a safety-sensitive position designation; and
  - (2) Employee's right to request a reasonable accommodation.

606.2 An employee in a position designated as safety-sensitive has the right to request a written explanation of the reasons and factors justifying the designation from the employee's agency.

606.3 The agency shall provide the explanation to the employee within ten (10) business days after receiving the request.

606.4 The explanation shall include a description of the specific routine job duties and circumstances under which such duties are performed, for which it is reasonably foreseeable that, if the employee performs such duties while under the influence of drugs or alcohol, the employee could suffer a lapse of attention or other temporary deficit that would likely cause actual, immediate, and serious bodily injury or loss of life to self or others.

606.5 The written explanation may be satisfied by providing the requesting employee with a position description that contains the information required under § 639.4.

606.6 An employee may appeal the designation of their position as safety-sensitive by filing a petition with the employee's personnel authority. The petition shall state the reasons why the employee's position does not meet the definition of a safety-sensitive position provided in § 699.

606.7 The personnel authority shall review the employee's petition, and any response from the agency, and issue a written determination granting or denying the employee's petition within thirty (30) calendar days after receiving the petition.

606.8 The determination shall state the reasons for granting or denying the petition.

606.9 If the personnel authority grants the petition, it shall re-designate the position in consultation with the employing agency.

606.10 If the personnel authority denies the petition, the determination shall state the right of appeal to the Office of Employee Appeals, pursuant to D.C. Code § 1-606.03a.

## **607 MEDIATION PROGRAM**

607.1 All appeals from adverse actions filed pursuant to §604.1 shall be subject to mandatory mediation.

- 607.2 The Office shall exert every possible effort to resolve matters by mediation, to the extent possible, rather than through litigation.
- 607.3 The Executive Director shall designate the mediation coordinator to implement the mediation program of the Office.
- 607.4 The mediation coordinator shall review the appeals pending in the Office and assign cases to the mediator where there is a reasonable likelihood of settlement to the mediation.
- 607.5 Any party may file a request for mediation with the Office. Upon the consent of all parties, the matter shall be placed on the mediation docket.
- 607.6 If a party declines mediation, the party must notify the Office in writing. The written notice will be considered part of the administrative record.
- 607.7 The mediation coordinator shall assign the matter to a mediator who shall promptly convene a conference for the purpose of attempting to reach a voluntary resolution of the appeal. The Administrative Judge assigned to an appeal may not serve as mediator on that appeal. A mediator may not be called as a witness in any proceeding concerning matters raised in a case to which they are assigned to attempt mediation.
- 607.8 The employee and their representative shall attend the conference. A representative of the agency with authority to approve a settlement by the agency shall either attend the conference or be available by telephone at the time set for and throughout the conference. The parties shall engage in good-faith efforts to resolve the matter.
- 607.9 The discussions at the conference and the offers of the parties shall be confidential and may not be offered or received into evidence or otherwise disclosed in subsequent adjudication or litigation.
- 607.10 Upon the failure of the parties to reach a settlement through mediation, the mediator shall assign the matter to an Administrative Judge for adjudication.
- 607.11 If the parties reach a settlement, the matter shall be dismissed in accordance with D.C. Official Code § 1-606.06(b).

## **608 FILING REQUIREMENTS**

- 608.1 To initiate an appeal of a final agency decision pursuant to § 604.1, an employee shall file a Petition for Appeal with the Office.
- 608.2 To initiate an appeal of a safe-sensitive designation pursuant to § 604.3, an employee shall file a Petition for Appeal of a Safety-sensitive Designation with the Office.

- 608.3 The date of filing for any submission shall be the date the Office time stamps on the document.
- 608.4 The filing of a Petition for Appeal, Petition for Appeal of a Safety-sensitive Designation, or Petition for Review must be made by personal delivery at the Office during business hours, or by mail addressed to the Office. Faxed or emailed petitions will not be accepted.
- 608.5 The filing of a Petition for Appeal, Petition for Appeal of a Safety-sensitive Designation, or Petition for Review must include one (1) original and two (2) copies of the submission. A Petition for Appeal or Petition for Appeal of a Safety-sensitive Designation and shall include any documents or information required by § 609.
- 608.6 The pages of any pleading, motion, exhibit or witness list, or any written submission, filed with the Office must be, to the extent feasible, consecutively numbered from beginning to end, including any attachments.
- 608.7 Except as provided in §§ 608.4 and 608.5, the filing of any pleading, motion, exhibit or witness list, or any written submission with the Office, shall be made as prescribed in § 608.8 unless the Administrative Judge directs otherwise.
- 608.8 Except as provided in §§ 608.4 and 608.5, a party must submit two (2) hard copies of any pleading, motion, exhibit or witness list, discovery response, or any written submission, either by mail or hand-delivery to the Office. The copies must be received by the Office on or before the prescribed deadline.
- 608.9 Except for a Petition for Appeal or Petition for Appeal of a Safety-sensitive Designation, the parties shall serve on each other one (1) copy of each document filed with the Office. A party may affect service by mailing or by personally delivering to each party a copy of the document submitted to the Office. For appeals filed pursuant to § 604.3, a party may affect service by electronically mailing a copy of the document to each party. Each document must be accompanied by a certificate of service specifying how, when, and on whom service was made.
- 608.10 The parties are responsible for submitting to the Office, in writing, any change in contact information, including the party's name, address, email address, or phone number. A party may submit written notice of a change in contact information to the Office by hand-delivery or by mail.
- 608.11 Filings containing Personal Identifiable Information (PII) as defined in § 699, must be redacted prior to being filed with the Office.
- 608.12 The party filing the document is solely responsible for ensuring that PII is redacted. The Office is not responsible for redacting PII.

- 608.13 The Office shall not be responsible for monitoring the disclosure of PII in the record.
- 608.14 Unless otherwise ordered by the Administrative Judge, a party or nonparty filer should not include PII in documents submitted to the Office.
- 608.15 A party filing any document containing their own PII waives any privacy protection by filing the information without redaction.

## **609 PETITIONS FOR APPEAL**

609.1 A Petition for Appeal filed pursuant to § 604.1 shall be:

- (a) Filed on the form approved by the Office; or
- (b) In writing and contain the following information:
  - (1) The name of the employee;
  - (2) The name of the agency which took the adverse action;
  - (3) The type of adverse action taken by the agency;
  - (4) The effective date of the adverse action taken by the agency;
  - (5) The name, address, email address, and telephone number(s) of the employee's representative, if any;
  - (6) The employee's address, email address, and telephone number(s);
  - (7) A copy of the agency's notice of final decision;
  - (8) A statement as to whether the employee or anyone acting on their behalf has filed an appeal under any negotiated review procedure pursuant to a collective bargaining agreement, or has filed a complaint with any other agency regarding the matter;
  - (9) The name of the collective bargaining unit of which the employee is a member, if any;
  - (10) The signature of the employee; and
  - (11) The signature of the employee's representative, if any.

609.2 Along with the Petition for Appeal filed in accordance with § 609.1, the employee shall submit the following information:

- (a) A copy of the final agency decision;



- (b) A statement as to whether the employee requests an evidentiary hearing or oral argument;
- (c) A concise statement of the facts giving rise to the appeal;
- (d) An explanation as to why the employee believes the agency's action was unwarranted; and
- (e) A statement of the specific relief the employee is requesting.

609.3 A Petition for Appeal of a Safety-sensitive Designation filed pursuant to § 604.3 shall be:

- (a) Filed on the form approved by the Office; or
- (b) In writing and contain the following information:
  - (1) The name of the employee, agency, and personnel authority which denied the employee's request to remove the safety-sensitive designation;
  - (2) The employee's address, email address, and telephone number(s);
  - (3) The name, address, email address, and telephone number(s) of the employee's representative, if any;
  - (4) A copy of the personnel authority's determination to deny the employee's request to remove the safety-sensitive designation;
  - (5) A statement as to whether the employee:
    - (i) Failed a job-related drug test;
    - (ii) Is subject to an adverse action related to the employee's failure to pass a job-related drug test; or
    - (iii) Is subject to random drug testing under federal law, or as a condition of federal funding;
  - (6) An explanation of why the employee believes their position should not be designated as safety sensitive; and

- (7) The signature of the employee and their representative, if any.

609.4 The Office may consider the filing of a Petition for Appeal or Petition for Appeal of a Safety-sensitive Designation incomplete until the employee provides all of the information required in accordance with this section.

609.5 An employee's failure to include a complete address, or to advise the Office of a change in address in writing, shall constitute a waiver of any right to notice and service, and may result in the dismissal of the appeal.

609.6 The Administrative Judge may allow an employee to amend a Petition for Appeal or a Petition for Appeal of a Safety-Sensitive Designation unless the Administrative Judge determines that an amendment would prejudice the rights of another party, or unduly delay the proceedings.

## **610 PREMATURE FILINGS**

610.1 A Petition for Appeal filed with the Office shall be considered a premature filing if it is filed before the effective date of the adverse action, or before the agency issues a final agency decision.

610.2 An Administrative Judge (or designee) will review a Petition for Appeal to determine if it is a premature filing. If the appeal is premature by ten (10) days or less, the Office shall docket the case as a new appeal. If an appeal is more than ten (10) days premature, an Administrative Judge (or designee) shall reject the appeal.

610.3 A motion seeking compliance enforcement or attorney's fees shall be considered a premature filing if it is filed before the last decision becomes final, or if an appeal of the last decision is pending before the Board or the Superior Court of the District of Columbia.

610.4 Premature filings seeking compliance enforcement or attorney's fees shall be dismissed by the Administrative Judge.

## **611 INCOMPLETE FILINGS**

611.1 The Office may consider the filing of a Petition for Appeal or a Petition for Appeal of a Safety-Sensitive Designation incomplete until the employee provides all of the information required under § 609.

611.2 If the employee fails to provide the information specified in § 609 within three (3) business days after the initial filing a Petition for Appeal or a Petition for Appeal of a Safety-Sensitive Designation, the appeal may be rejected by the Office. The Office shall mail a notice of incomplete filing to the employee or their representative.

611.3 If the defect in an incomplete Petition for Appeal or Petition for Appeal of a Safety-Sensitive Designation is cured within three (3) business days, the date of the original filing will be the official filing date of the appeal.

611.4 The Office will not request an answer from an agency or personnel authority until the filing of a Petition of Appeal or Petition for Appeal of a Safety-Sensitive Designation is deemed complete.

## **612 ANSWER**

612.1 The Office shall promptly send a copy of the Petition for Appeal to the agency, and the agency shall file an answer within thirty (30) days of the service of the Petition for Appeal.

612.2 An agency's answer in which the allegations of a Petition for Appeal are contested shall contain the following:

- (a) The name of the employee and the agency which took the action;
- (b) The matter number assigned to the appeal by the Office;
- (c) A statement of the appealed action the agency took against the employee and the reason(s) for the agency's action;
- (d) A specific response to each allegation of the petition admitting, denying, or explaining each in whole or in part. The Administrative Judge may assume that the agency concedes as fact an allegation in the Petition for Appeal that the agency does not specifically explain or deny in the answer;
- (e) All documents contained in the agency record of the proceeding;
- (f) A request for an evidentiary hearing or oral argument, if desired; and
- (g) The designation of, and signature by, the authorized agency representative. If the agency fails to designate a representative, the Office shall regard the agency director as the representative.

612.3 If the agency elects not to contest the allegations of fact set forth in the Petition for Appeal, the answer shall consist of a statement that the agency admits all of the material allegations to be true, and shall constitute a waiver of the agency's right to present evidence or testimony contradicting the admitted facts. An agency's election not to contest the material allegations of fact set forth in the Petition for Appeal shall not constitute a waiver of the agency's right to further participate in the proceedings to raise or address questions of law.

- 612.4 Failure by the agency to file an answer to a Petition for Appeal within the time limit set forth in § 612.1 may constitute a default, and the Administrative Judge may, without further notice, render an appropriate decision.
- 612.5 The Office shall promptly send a copy of the Petition for Appeal of a Safety-sensitive Designation to the personnel authority, and the personnel authority shall file an answer within fifteen (15) business days after the employee files the appeal.
- 612.6 The personnel authority's answer to the Petition for Appeal of a Safety-sensitive Designation shall include the complete record of the proceedings before the personnel authority, including any documentary evidence reviewed or considered in rendering the determination.
- 612.7 The employee may file a reply to the personnel authority's answer to the Petition for Appeal of a Safety-Sensitive Designation within five (5) business days after the personnel authority files its answer.
- 612.8 The designation of an employee's position as safety-sensitive shall not be suspended, tolled, or otherwise invalidated during the pendency of an appeal.

### **613 MOTIONS**

- 613.1 Except where the Administrative Judge permits an oral motion hearing, motions shall be in writing, filed with the Office, and served upon the parties in accordance with § 608.9.
- 613.2 Motions shall state the particular order, ruling, or action requested and the grounds and authority for the requested order, ruling, or action.
- 613.3 No later than ten (10) calendar days after the service of a motion, or within such time as the Administrative Judge may direct for good cause shown, the opposing party may serve and file an answer to the motion. The moving party shall have no right to reply, except as permitted by the Administrative Judge. No oral argument will be heard on motions unless the Administrative Judge directs otherwise. Written briefs may be filed with motions and with answers to motions.
- 613.4 For appeals filed pursuant to § 604.3, the Administrative Judge may grant a motion for extension to deadlines only where extraordinary circumstances prevent the meeting of the deadline, and the need for the extension outweighs any prejudice to a party.

### **614 CONSOLIDATION AND JOINDER**

- 614.1 If an employee has two (2) or more appeals pending before the Office, the Administrative Judge may consolidate the appeals and adjudicate them as one (1) action.

614.2 If two (2) or more employees have appeals involving similar or identical issues pending before the Office, the Administrative Judge may join the appeals for adjudication as one (1) action.

614.3 The Administrative Judge may consolidate or join appeals on their own motion, or on the motion of a party, if to do so would:

- (a) Expedite processing of the cases; and
- (b) Not adversely affect the interests of the parties.

614.4 At their discretion and at any time, the Administrative Judge may sever appeals consolidated or joined under these rules and proceed with each appeal separately.

## **615 REPRESENTATION**

615.1 In any proceeding before the Office, the employee may appear on their own behalf, through an attorney, through a union representative, or through any other competent individual.

615.2 For appeals filed pursuant to § 604.1, the agency may appear before the Office only through counsel or an individual acting in a representative capacity. If the agency fails to designate a representative, the Office shall regard the agency director as the representative.

615.3 For appeals filed pursuant to § 604.3, the personnel authority may appear before the Office only through counsel or an individual acting in a representative capacity.

615.4 Except where the agency director is the agency representative, no person may participate in a representative capacity before the Office until:

- (a) The party submits a signed written statement authorizing such representation; and
- (b) The representative submits a signed written statement which contains their name, address, email address, and telephone number, and which certifies that he or she is available and willing to represent the party's interest.

## **616 INTERVENTION**

616.1 Any person or District government agency may seek to intervene in an appeal by filing a motion. The motion shall state why the person or agency believes intervention is warranted. After allowing the original parties a reasonable period of time to respond, the Administrative Judge may permit the movant to intervene if the movant has an interest that may be affected by the final disposition of the case and the movant's:

- (a) Interest will not be represented by the existing parties;
- (b) Participation may reasonably be expected to assist in the development of a proper record; and
- (c) Participation will not broaden the issues, resulting in prejudicial delay of the proceeding.

616.2 An intervener shall be considered a full party to the proceedings and shall have the same rights and duties as a party, except that the intervener:

- (a) Shall not have an independent right to a hearing;
- (b) May participate only on the issues affecting them as determined by the Administrative Judge; and
- (c) Shall have no right to an award of attorney fees under § 639.

## **617 SUBSTITUTION**

617.1 If an employee dies while the appeal is pending before the Office, and the interest of the deceased employee has not terminated because of the death, the Administrative Judge, upon motion, may order substitution of the proper parties. A motion for substitution may be made within ninety (90) calendar days after the death of the employee.

617.2 If an employee becomes incompetent by reason of mental or physical infirmity, the Administrative Judge, upon motion, may allow the appeal to be continued by the employee's representative.

617.3 When an agency's interest in the appeal is transferred to another District agency, the Administrative Judge may:

- (a) Allow the appeal to continue against the original agency;
- (b) Order the substitution of the successor agency; or
- (c) Join the successor agency with the original agency.

## **618 SUMMARY DISPOSITION**

618.1 The Administrative Judge may, after notifying the parties and giving them an opportunity to submit additional evidence or legal argument, render a summary disposition of the matter without further proceedings if, upon examination of the record in an appeal, it appears that:

- (a) There are no material and genuine issues of fact;
- (b) A party is entitled to a decision as a matter of law; or
- (c) The appeal fails to state a claim upon which relief can be granted.

618.2 An Administrative Judge may render a summary disposition either *sua sponte*, after notice under § 618.1, or upon motion of a party.

## **619 INTERLOCUTORY APPEALS**

619.1 The Administrative Judge may permit an interlocutory appeal if they determine that the issue presented is of such importance to the proceeding that it requires the Board's immediate consideration.

619.2 A party seeking review by interlocutory appeal must file a motion for certification within five (5) business days of service of the Administrative Judge's determination. The motion shall include arguments in support of both the certification and the determination to be made by the Board.

619.3 The Administrative Judge shall grant or deny a motion for certification.

619.4 If certification is granted, the record shall be referred to the Board and the Board shall make a decision on the issue. The Administrative Judge shall proceed in accordance with the Board's decision.

619.5 At the discretion of the Administrative Judge or the Board, the proceeding may be stayed while an interlocutory appeal is pending.

## **620 DISCOVERY**

620.1 Parties may obtain discovery by one (1) or more of the following methods:

- (a) Depositions upon oral examination or written questions;
- (b) Written interrogatories;
- (c) Requests for production of documents or things for inspection and other purposes; and
- (d) Requests for admission.

620.2 Unless the Administrative Judge orders otherwise, the methods described in § 620.1 may be used in any sequence. A party's conduct of discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

- 620.3 Unless the Administrative Judge directs otherwise, the parties may obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending appeal. Information sought may include the existence, description, nature, custody, condition and location of books, documents, or other tangible things and the identity and location of persons having any knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at an evidentiary hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
- 620.4 The Administrative Judge may limit the frequency or use of discovery if:
- (a) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
  - (b) The party seeking discovery has had ample opportunity by discovery in the appeal to obtain the information sought; or
  - (c) The discovery is unduly burdensome or expensive, in light of the nature of the case, the relief sought, the limitations on the parties' resources, and the importance of the issues involved in the case.
- 620.5 The Administrative Judge may deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.
- 620.6 Discovery may be commenced after the Office notifies the agency that the employee has filed the petition. Unless the Administrative Judge directs otherwise, discovery shall be completed by the date of the prehearing conference.
- 620.7 Discovery matters before the Office are intended to be of a simplified nature. Discovery procedures shall be established by the Administrative Judge as appropriate under the circumstances. For additional guidance on discovery procedures, the parties may refer to the District of Columbia Superior Court Rules of Civil Procedure, which should be interpreted as instructive rather than controlling.

## **621 SUBPOENAS**

- 621.1 Application for issuance of a subpoena requiring a person to appear and testify at a specific place and time shall be made in writing to the Administrative Judge. All requests for subpoenas *ad testificandum* shall clearly identify the person subpoenaed and their address and shall be supported by a showing of the relevance and materiality of the testimony sought.



- 621.2 Application for issuance of a subpoena requiring a person or entity to produce documents (including writings, drawings, graphs, charts, photographs, phone records and other recordings, and other data compilations from which information can be obtained) at a specific time and place shall be made in writing to the Administrative Judge. All requests for subpoenas *duces tecum* shall specify with reasonable particularity the information sought, the facts expected to be established thereby, and how these facts are relevant and material.
- 621.3 An applicant for a subpoena shall arrange for service. Except for good cause shown, service shall be completed no later than ten (10) calendar days before the date of the requested testimony or production.
- 621.4 Personal service of a subpoena may be made by any person, not a party, who is at least eighteen (18) years of age. Service of the subpoena shall be attested to in an affidavit by the person making the service. The attesting affidavit shall state the date, time, and method of service.
- 621.5 Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within three (3) calendar days of the time for compliance with the subpoena. The motion shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits, and other supporting documentation.
- 621.6 In the case of contumacy or failure to obey an issued subpoena, the Office, pursuant to D.C. Official Code § 1-606.02(a)(4), may request enforcement of the subpoena in the Superior Court of the District of Columbia.

## **622 ADMINISTRATIVE JUDGES**

- 622.1 Proceedings shall be presided over by an Administrative Judge.
- 622.2 Administrative Judges shall conduct the hearings fairly and impartially, take all necessary action to avoid delay in the disposition of proceedings, and maintain order. They shall have all powers necessary to that end including, but not limited to, the power to:
- (a) Administer oaths and affirmations;
  - (b) Issue subpoenas and protective orders;
  - (c) Rule upon motions;
  - (d) Compel discovery;

- (e) Regulate the course of the proceeding, require an evidentiary hearing (if appropriate), fix the time and place of an evidentiary hearing, and exclude persons from evidentiary hearings for contumacious conduct;
- (f) Call and examine witnesses;
- (g) Admit documentary or other evidence to the record;
- (h) Dismiss cases based on a settlement agreement reached by the parties; and
- (i) Take other appropriate action authorized by statute, mandatory case law, these rules, or the Board.

622.3 If a new Administrative Judge is substituted for the one originally assigned, a party wishing to object to the substitution shall file a motion no later than seven (7) calendar days after the Office notifies the parties of the reassignment. Failure to make the motion within the specified time period shall constitute a waiver of the right to object to the substitution.

## **623 DISQUALIFICATION OF ADMINISTRATIVE JUDGE**

623.1 If an Administrative Judge deems themselves disqualified to preside in a particular case, they shall withdraw by notice, on the record, and shall notify the Executive Director of their withdrawal.

623.2 At any time following the assignment of the appeal to an Administrative Judge, and before issuance of an Initial Decision in the matter, a party may request the Administrative Judge to disqualify themselves on the grounds of personal bias or other disqualification, by serving and filing a motion promptly upon the discovery of the alleged facts, with an affidavit setting forth, in detail, the matters alleged to constitute grounds for disqualification.

623.3 If, in the opinion of the Administrative Judge, the affidavit is sufficient on its face, the Administrative Judge shall disqualify and remove themselves from the case. If the Administrative Judge does not disqualify themselves, the Administrative Judge shall issue a written order to that effect stating the grounds for the ruling.

## **624 SANCTIONS**

624.1 The Administrative Judge may impose sanctions upon the parties as necessary to serve the ends of justice in instances including, but not limited to, those set forth in this section.

624.2 If a party fails to comply with an order or ruling, the Administrative Judge may, for example:

- (a) Draw an inference adverse to the party who failed to comply;

- (b) Prohibit the party failing to comply with an order from introducing evidence concerning, or otherwise relying upon evidence relating to, the information sought;
- (c) Permit any party who has been prejudiced by the non-compliance to introduce secondary evidence concerning the information sought; and
- (d) Strike any part of the pleadings or other submissions of the party failing to comply with an order.

624.3 If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

624.4 The Administrative Judge may refuse to consider any motion or other action which is not filed in a timely fashion.

## **625 EX PARTE COMMUNICATIONS**

625.1 An *ex parte* communication which involves the merits of the case is prohibited.

625.2 In the event of a prohibited communication, the Administrative Judge shall describe the occurrence on the record with notice to the parties by filing a memorandum (if the transaction was oral), or by filing any writing delivered to the Administrative Judge.

625.3 When an Administrative Judge determines that a party has initiated a prohibited *ex parte* communication, the Administrative Judge may impose sanctions or remedial relief as may be appropriate under the circumstances.

## **626 PREHEARING CONFERENCES**

626.1 The Administrative Judge may convene a prehearing conference to consider:

- (a) Simplification, clarification, compromise, or settlement of the issues;

- (b) Necessary amendments to the pleadings;
- (c) Stipulations, admissions of fact, and the contents, admissibility, and authenticity of documents;
- (d) Whether to order an evidentiary hearing to expedite the presentation of evidence, including, but not limited to, restricting the number of witnesses;
- (e) A statement of the issues; and
- (f) Any matters that may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and furnishing, for inspection or copying, non-privileged documents, papers, books, or other physical exhibits, which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of any party to the proceeding.

626.2 In the discretion of the Administrative Judge, a prehearing conference may be recorded verbatim.

626.3 After a prehearing conference, the Administrative Judge shall issue an order that identifies the legal and factual issues in the appeal. Unless modified, the order shall control the subsequent course of the proceeding.

626.4 Failure of a party to appear for a prehearing conference, unless the Administrative Judge excuses the party for good cause shown, before or after the fact, may be deemed to be a waiver by that party of all rights to participate further in the proceeding, and may be grounds for dismissal of the case or the imposition of other sanctions.

## **627 EVIDENTIARY HEARINGS**

627.1 A party may request the opportunity for an evidentiary hearing to adduce testimony to support or refute any fact alleged in a pleading.

627.2 If the Administrative Judge grants a request for an evidentiary hearing, or makes a determination that one is necessary, the Administrative Judge will so advise the parties and, with appropriate notice, designate the time and place for the hearing and the issues to be addressed. The Administrative Judge shall consider the availability of the parties or their authorized representative(s) when designating the time and place of the evidentiary hearing.

627.3 Postponement of an evidentiary hearing will be allowed only upon good cause shown or upon agreement of the parties, with the concurrence of the Administrative Judge. Except in extraordinary circumstances, a motion for a postponement shall

not be considered unless it is served and filed at least seven (7) calendar days in advance of the date designated for the evidentiary hearing.

627.4 Failure of a party to appear for an evidentiary hearing, unless excused by the Administrative Judge for good cause shown, before or after the fact, may be deemed to be a waiver by that party of all rights to participate further in the proceeding, and may be grounds for dismissal of the case or the imposition of other sanctions.

627.5 Hearings shall be open to the public, except that the Administrative Judge may order a hearing or any part of a hearing closed, if a closed hearing would be in the best interest of the employee, a witness, the public, or other affected persons.

## **628 RECORDING AND TRANSCRIPTS**

628.1 Evidentiary hearings shall be recorded verbatim under the supervision of the Administrative Judge and shall be the sole official record of the proceeding.

628.2 A transcript or, if the record was not transcribed, a copy of the recording may be obtained by the parties upon request.

628.3 The Office will provide one (1) copy of the transcript or recording to each party or, if the party is represented, to the representative at no cost. Any additional copies of the record shall be at the expense of the requesting party.

628.4 A party may request correction to the official transcript by written motion. A motion for correction shall be submitted within ten (10) calendar days of receipt of the transcript.

## **629 PRESENTATION OF EVIDENCE OR WITNESSES**

629.1 All material and relevant evidence or testimony shall be admissible but may be excluded if it is unduly repetitious.

629.2 During an evidentiary hearing, a party shall be entitled to present their case or defense by oral, documentary, or physical evidence, and to conduct reasonable cross examination.

629.3 Objections to the admission of evidence, or to the conduct of the proceeding, may be made orally on the record where an evidentiary hearing has been provided, or by written motion. Any arguments, briefs, or legal memoranda, if requested by the Administrative Judge, shall be included in the record. Rulings on objections shall be made at the time of the objection or prior to the receipt of further evidence, unless the Administrative Judge orders otherwise, and shall be a part of the record.

629.4 The parties may agree upon any facts or procedures relevant to the proceeding. Any stipulations shall be binding on the parties.

- 629.5 The Administrative Judge on their own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact shall satisfy a party's burden of proving the fact noticed.
- 629.6 All exhibits offered into evidence shall be numbered and marked so as to identify the party offering the exhibit.
- 629.7 Whenever the Administrative Judge excludes evidence, the offering party may make an offer of proof of what the party expects the evidence to establish. In the case of an evidentiary hearing, if the offer of proof consists of an oral statement, it shall be included in the record. If the offer of proof consists of an exhibit or other documentary evidence, it shall be marked for identification and retained in the record so that it will be available for consideration by any reviewing authority.

## **630 WITNESSES**

- 630.1 Every person shall be competent to be a witness as to any material matter, unless the Administrative Judge finds that the proposed witness is incapable of:
- (a) Expressing themselves concerning the matter in a manner which can be understood by the Administrative Judge either directly or through interpretation by one who can understand the witness; or
  - (b) Understanding the duty of a witness to tell the truth.
- 630.2 Each District of Columbia government agency shall make its employees available to furnish sworn statements or affirmations or to appear as witnesses at depositions and hearings when the Administrative Judge requests. When providing statements or testimony, District employees shall be on official duty status.
- 630.3 Witnesses not employed by the District of Columbia government may be required to appear by subpoena at the cost of the moving party.
- 630.4 Witnesses shall have the right to representation when testifying.

## **631 BURDEN OF PROOF**

- 631.1 The burden of proof for material issues of fact shall be by a preponderance of the evidence.
- 631.2 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.

631.3 For appeals filed under § 604.3, the employee shall have the burden of proof as to issues of jurisdiction. The personnel authority must establish that employee's position meets the definition of safety sensitive.

## **632 CLOSING THE RECORD**

632.1 When an evidentiary hearing has been provided, the record shall be closed at the conclusion of the hearing, unless the Administrative Judge directs otherwise. When no evidentiary hearing has been provided, the record shall be closed on the date that the Administrative Judge sets as the final date for the receipt of submissions from the parties.

632.2 Once the record is closed, no additional evidence or argument shall be accepted into the record unless the Administrative Judge reopens the record pursuant to § 633.1.

## **633 RE-OPENING THE RECORD; TERMINATION OF JURISDICTION**

633.1 The Administrative Judge may reopen the record to receive further evidence or argument at any time prior to the issuance of the Initial Decision in accordance with § 633.

633.2 The jurisdiction of an Administrative Judge terminates upon issuance of the Initial Decision; Provided, that the Administrative Judge shall retain jurisdiction over the appeal to the limited extent necessary to correct the record or transcript, rule on a request by the employee for attorney fees or process any petition for enforcement.

## **634 INITIAL DECISIONS**

634.1 For appeals filed pursuant to § 604.1, the Administrative Judge shall issue an Initial Decision no later than one hundred twenty (120) business days after the employee files a complete Petition for Appeal; Provided, that the Administrative Judge may extend this period for a reasonable time under extraordinary circumstances.

634.2 For appeals filed pursuant to § 604.1, each Initial Decision shall contain:

- (a) Findings of fact and conclusions of law, as well as the reasons or bases therefore, upon all the material issues of fact and law presented on the record;
- (b) An order as to the final disposition of the case, including appropriate relief if granted; and
- (c) A statement of the right to seek further administrative remedy, including the right to submit a Petition for Review in accordance with § 637.

- 634.3 For appeals filed pursuant to § 604.3, the Administrative Judge shall issue an Initial Decision within sixty (60) business days after the appeal is filed; unless the Administrative Judge determines that an evidentiary hearing is warranted, then the AJ shall issue an Initial Decision within ninety (90) business days after the appeal is filed.
- 634.4 For appeals filed pursuant to § 604.3, each Initial Decision shall be in writing and contain:
- (a) Findings of fact, as well as the reasons or basis therefore, upon all the material issues of fact and law presented on the record;
  - (b) An order as to disposition of the case, including appropriate relief if granted; and
  - (c) A statement of the right to seek further administrative remedy, including the right to file a Petition for Review with the Board or a petition for enforcement.
- 634.5 The Initial Decision shall uphold, reverse, or modify the determination of the agency or personnel authority.
- 634.6 Notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was a harmless error.
- 634.7 The Office shall serve a copy of the Initial Decision on each party to the proceeding, including intervenors.

## **635 FINALITY OF DECISIONS**

- 635.1 This section shall apply to Initial Decisions for appeals filed pursuant to § 604.1. Initial Decisions issued for appeals filed pursuant to § 604.3 shall be subject to the requirements of § 636.
- 635.2 The Initial Decision shall become final thirty-five (35) calendar days after issuance.
- 635.3 The Initial Decision shall not become final if any party files a Petition for Review or if the Board reopens the case on its own motion within thirty-five (35) calendar days after issuance of the Initial Decision.
- 635.4 If the Board denies all Petitions for Review, the Initial Decision shall become final upon issuance of the last denial.
- 635.5 If the Board grants a Petition for Review or reopens a case, the subsequent decision of the Board shall be the final decision.



635.6 Administrative remedies shall be considered exhausted when a decision becomes final in accordance with this section.

**636 FINALITY OF DECISIONS FOR SAFETY-SENSITIVE DESIGNATION APPEALS**

636.1 This section shall apply to Initial Decisions for appeals filed pursuant to § 604.3.

636.2 An Initial Decision concerning a safety-sensitive designation shall become final fifteen (15) business days after issuance, unless a Petition for Review is filed in accordance with § 638.

636.3 If the Board denies the Petition for Review, the Initial Decision shall become final upon the issuance of the last denial.

636.4 If the Board grants a Petition for Review, the subsequent designation decision shall be the final designation decision of the Office unless the decision states otherwise.

636.5 Final designation decisions shall be published in accordance with the rules and regulations of the Office and shall be published on the Office's website.

636.6 In accordance with D.C. Official Code § 1-606.03a(e), a final designation decision is not subject to judicial review.

**637 PETITIONS FOR REVIEW**

637.1 This section shall apply to Initial Decisions for appeals filed pursuant to § 604.1. Petitions for Review in appeals filed pursuant to § 604.3 shall be subject to the requirements of § 638.

637.2 Any party to the proceeding may serve and file one (1) original and one (1) copy of a Petition for Review of an Initial Decision with the Board within thirty-five (35) calendar days of issuance of the Initial Decision.

637.3 Any party may file an answer within thirty-five (35) calendar days after the filing of the Petition for Review.

637.4 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:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation, or policy;

- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The Initial Decision did not address all material issues of law and fact properly raised in the appeal.

637.5 Any objections or legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board.

637.6 The Board may review an Initial Decision on its own motion within thirty-five (35) calendar days of issuance of the Initial Decision.

637.7 The Board may order oral argument on its own motion or on motion filed by any party.

637.8 In its discretion, the Board may grant a motion to expedite a Petition for Review. The motion must be approved by at least three (3) members of the Board.

637.9 The Board may affirm, reverse, remand, modify, or vacate the Initial Decision, in whole or in part.

637.10 The Board's decision on whether to grant or deny a Petition for Review shall be by public vote. The Board's final decision shall be the written opinion and order.

637.11 An employee or agency may appeal a final decision to the District of Columbia Superior Court in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01 *et seq.* (2016 Repl. & 2019 Supp.)).

**638 PETITIONS FOR REVIEW FOR SAFETY-SENSITIVE DESIGNATION APPEALS**

638.1 This section shall apply to Petitions for Review in appeals filed pursuant to § 604.3.

638.2 Any party to the proceeding may serve and file a Petition for Review of an initial designation decision with the Board within fifteen (15) business days of issuance of the initial designation decision.

638.3 The responding party may file an answer to the Petition for Review within fifteen (15) business days after the petition for review is filed.

638.4 The Petition for Review shall set forth objections to the initial designation decision supported by reference to the record.

638.5 The Board shall issue a final designation decision within sixty (60) business days.

638.6 The Board may affirm, reverse, remand, or modify the initial designation decision, in whole or in part.

638.7 The Board's decision on whether to grant or deny a petition for review shall be by public vote. However, the final decision of the Board shall be the written opinion and order.

## **639 ATTORNEY FEES**

639.1 An employee shall be entitled to an award of reasonable attorney fees if:

- (a) The employee is a prevailing party; and
- (b) The award is warranted in the interest of justice.

639.2 Unless the Administrative Judge directs otherwise, a request for attorney fees shall be made by written motion within thirty (30) calendar days of the date that the Initial Decision becomes final.

639.3 An employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal.

639.4 An agency may file a written opposition to the employee's motion for attorney fees within fifteen (15) business days of service of the motion or within such time as the Administrative Judge may direct. In its written opposition the agency must state its objection to the employee's request for attorney fees with particularity and clarity.

639.5 A decision by an Administrative Judge on a request for attorney fees shall be considered an addendum to the Initial Decision.

## **640 COMPLIANCE AND ENFORCEMENT**

640.1 For appeals filed pursuant to § 604.1, the District agency shall comply with the Office's final decision within thirty (30) calendar days from the date the decision becomes final unless the Office's final decision is appealed to the Superior Court of the District of Columbia.

640.2 For appeals filed pursuant to § 604.3, the District agency shall comply with the Office's final decision within thirty (30) calendar days from the date the decision becomes final.

640.3 If any agency fails to comply with the final decision of the Office within the time period specified in this section, the employee may file a motion to enforce the final decision. The motion shall be directed to the Administrative Judge who decided the appeal.

- 640.4 An agency must file an answer within twenty (20) calendar days of receipt of the employee's motion.
- 640.5 The employee, with specificity, shall explain in the motion how the agency has failed to comply with the Office's decision. The agency shall include in its answer a statement which admits or denies each allegation in the employee's motion.
- 640.6 The parties shall serve the motion and answer on each other.
- 640.7 Failure by the agency to file an answer to the motion for enforcement shall be construed as an admission of the employee's allegations.
- 640.8 The Administrative Judge shall take all necessary action to determine whether the final decision is being complied with and shall issue a written opinion on the matter.
- 640.9 The Administrative Judge may, for good cause shown, allow the agency additional time to submit proof of compliance with the Initial Decision.
- 640.10 If the Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with D.C. Official Code § 1-606.02.
- 640.11 No additional filings are permitted once the General Counsel certifies the final decision.
- 640.12 If the agency fails to comply with the order, the General Counsel may take all necessary action to secure compliance with the order.

#### **641 RECUSAL OF BOARD MEMBERS**

- 641.1 A Board member shall recuse themselves from participating in any proceeding in which their impartiality may reasonably be questioned. Reasons for recusal include, but are not limited to:
- (a) A personal bias or prejudice concerning a party;
  - (b) Personal knowledge of disputed facts concerning the Petition for Review;
  - (c) The Board member has previously served as a lawyer or witness concerning the same appeal; or
  - (d) A personal financial interest in the outcome of the proceeding.
- 641.2 The Board member shall notify the Chairperson of the recusal prior to discussion of the Petition for Review. The Board member will not be permitted to discuss the

merits of the case and shall not participate in the vote to grant, deny, or remand the Petition for Review.

## 699 DEFINITIONS

699.1 When used in this chapter, the words and phrases set forth in this section shall have the following meanings:

**Administrative Judge** - an attorney, licensed to practice law in the District of Columbia, who is authorized by the Office of Employee Appeals (OEA) to hear and adjudicate appeals.

**Adverse action** - any action taken in accordance with § 604.1.

**Business hours** - Monday through Friday from 9:00 a.m. until 5:00 p.m., except legal holidays.

**Certificate of Service** - a document certifying that a party has served copies of pleadings on the other parties.

**Date of filing** - the date OEA time stamps on the document.

**Day** - a calendar day, unless otherwise specified.

**Ex Parte Communication** - any oral or written communication between an Administrative Judge and a party to a legal proceeding, or any other person involved in the case, outside of the presence of the opposing party or the opposing party's attorney.

**Final agency decision** - a written document from a District agency which contains the cause of action taken by the District agency against an employee, the employee's right to appeal to OEA, OEA's rules, an OEA appeal form, notice of rights to appeal under a negotiated review procedure (if applicable), and notice of the right to representation by a lawyer or other representative authorized by these rules.

**Harmless error** – an error in the application of a District agency's procedures, which did not cause substantial harm or prejudice to the employee's rights, or significantly affect the agency's final decision to take the action.

**Interlocutory appeal** - an appeal to the Board of a ruling made by an Administrative Judge during the course of a proceeding.

**Mediation** - a process in which the parties in a proceeding, with the assistance of a trained, impartial third person, discuss the dispute in order to reach a settlement.

**Motion** – an oral or written request that an Administrative Judge take a particular action concerning a proceeding.

**Party** - a person, agency, or intervenor, who is participating in a proceeding.

**Personal identifying information** - any information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked, or can be reasonably linked, to a specific individual. Examples include, but are not limited to the following:

- (a) Driver's license or driver's license number;
- (b) Savings, checking, or other financial account number;
- (c) Social security number or tax identification number;
- (d) Passport or passport number;
- (e) Citizenship status, visa, or alien registration card or number;
- (f) Birth certificate or a facsimile of a birth certificate;
- (g) Credit or debit card, or credit or debit card number;
- (h) Credit history or credit rating;
- (i) Personal identification number, electronic identification number, password, access code or device, electronic address, routing information or code, digital signature, or telecommunication identifying information;
- (j) Biometric data, such as a fingerprint, voice print, retina or iris image, or other unique physical representation; and
- (k) Any other information that can be used to access a person's financial resources, access medical information, obtain identification, act as identification, or obtain property.

**Petition for Appeal** - a request for review of an adverse action by an agency pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01 *et seq.* (2016 Repl. & 2019 Supp.)).

**Petition for Appeal of a Safety-sensitive Designation** - a request for review of an agency action affecting an employee's position designation as safety-sensitive in accordance with § 2 of the Medical Marijuana Program Patient

Employment Protection Amendment Act of 2020, effective April 27, 2021 (D.C. Law 23-276; D.C. Official Code §§ 1-606.03a and 1-615.03a).

**Petition for Review** - a request for review of an Initial Decision of an Administrative Judge.

**Pleading** – a written submission setting out claims, allegations, arguments, or evidence. Pleadings include briefs, motions, petitions, attachments, and responses.

**Preponderance of the evidence** - 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.

**Protective order** - an order issued by an Administrative Judge which prevents the disclosure of sensitive information except to certain individuals under certain conditions.

**Redaction** - the process of editing, censoring, or obscuring part of a text for legal or security purposes.

**Safety-sensitive position** - a position with the District which has been designated as one in which it is reasonably foreseeable that, if the employee performs the position's routine duties while under the influence of drugs or alcohol, the employee could suffer a lapse of attention or other temporary deficit that would likely cause actual, immediate, and serious bodily injury or loss of life to self or others.

**Subpoena** - a writ issued to compel testimony by a witness, or the production of documents.

**Substantial evidence** - the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even when other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.