

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MICHAEL GAMBOA,)	
Employee)	OEA Matter No. J-0082-14
)	
v.)	Date of Issuance: November 10, 2014
)	
DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	
_____)	ERIC T. ROBINSON, Esq.
)	Senior Administrative Judge
Johnnie Louis Johnson, III, Esq., Employee Representative		
Lindsey Appiah, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Michael Gamboa (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Department of Youth Rehabilitation Services (“DYRS” or “the Agency”) action of removing him from service through a Reduction in Force (“RIF”). Employee’s petition for appeal was date stamped as received by the OEA on June 6, 2014. According to a letter (“termination letter”) dated September 6, 2013, Employee was notified by DYRS that the effective date of his removal from service was October 11, 2013. After I was assigned this matter, I determined that there existed a question as to whether the OEA may exercise jurisdiction over the instant appeal. Consequently, I issued an order requiring Employee to address said issue in a written brief. Employee complied with said order. After carefully reviewing Employee’s response, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628 *et al*, 59 DCR 2129 (March 16, 2012) states:

628.1 The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. Preponderance of the evidence shall mean the degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

628.2 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”) modified certain sections of the Comprehensive Merit Personnel Act (“CMPA”) pertaining to this Office. Of specific relevance to this matter is § 101(d) of OPRAA, which amended § 1-606.3(a) of the Code (§ 603(a) of the CMPA) in pertinent part as follows: “Any appeal [to this Office] shall be filed within 30 days of the effective date of the appealed agency action.”

“The starting point in every case involving construction of a statute is the language itself.” *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). “A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language.” *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980). Further, “[t]he time limits for filing with administrative adjudicatory agencies, as with the courts, are mandatory and jurisdictional matters.” *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991).

Of note, OEA Rule 604 *et al*, 59 DCR 2129 (March 16, 2012) provides as follows:

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.* (2006 Repl. & 2011 Supp.)) or §604.2 below, 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) calendar days of the effective date of the appealed agency action.**

Emphasis Added.

According to the termination letter, Employee was informed that the effective date of his termination was October 11, 2013. The Termination Letter further provided in relevant part that “[y]ou may appeal this action to the [OEA]... An appeal to the OEA must be filed within 30 calendar days. A copy of the OEA appeal form and the OEA regulations are enclosed.” I find that the termination letter adequately warned Employee of his option to personally appeal to the OEA in a timely manner. However, because Employee failed to file a petition for appeal in the instant matter with the OEA within the 30 day filing deadline, I find that he is precluded from pursuing said appeal through the OEA.

Based on the foregoing, I further find that the Employee has not established that this Office has jurisdiction over this matter. Because of the Employee’s failure to timely file his petition for appeal with the OEA, I conclude that I must dismiss this matter for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.¹

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge

¹ Since Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of any arguments that Employee noted in his petition for appeal.