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**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:)	
)	
TERRAINE WIGGINS,)	
Employee)	
)	OEA Matter No. J-0023-16
v.)	
)	Date of Issuance: April 5, 2016
D.C. DEPARTMENT OF)	
TRANSPORTATION,)	
Agency)	MICHELLE R. HARRIS, Esq.
)	Administrative Judge

Terraine Wiggins, Employee *Pro Se*
Michael F. O'Connell, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 20, 2016, Terraine Wiggins, ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Transportation's ("Agency" or "DDOT") decision to terminate him.

I was assigned this matter on January 27, 2016. On February 4, 2016, Agency filed its Answer to Employee's Petition for Appeal and a Motion for Summary Disposition. Agency noted in its response that OEA does not have jurisdiction over this appeal because Employee resigned prior to the effective date of his removal and that his petition was untimely. On February 10, 2016, I issued an Order directing Employee to submit a brief addressing the jurisdiction issue raised by Agency in its response. Additionally, Agency had the option to submit a response to Employee's brief. Employee's brief was due on or before February 25, 2016. Employee did not submit his brief by the deadline. On March 2, 2016, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on his failure to provide a response to the February 10, 2016, Order. Employee had until March 16, 2016, to respond. Employee responded on March 15, 2016. After considering the parties' arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Transportation Specialist (Transportation Operations), DS-2101-12. In a Notice of Final Decision of Proposed Removal, dated November 18, 2015, Employee was notified that he would be terminated for : (1)“Any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law: Assault, battery, or fighting on duty pursuant to DPM § 1603.3(e) and §1619.1(5)(c), and; (2) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: Neglect of duty, pursuant to DPM §1603.3(f)(3) and §1619.1(6)(c).”¹ The notice indicated that the effective date of Employee’s removal was November 27, 2015. On November 23, 2015, Employee submitted a letter of resignation from his position. Employee’s Standard Form-50 (SF-50) dated November 24, 2015, reflects the resignation.² On January 20, 2016, Employee filed his Petition for Appeal with the Office of Employee Appeals.

Employee’s Position

Employee asserts he would like to appeal his termination because of his service record and that his involvement with the altercation at issue in this matter was in self-defense. Employee asserts that he resigned from his position on November 23, 2015, following his receipt of the Final Agency decision dated November 18, 2015.

Agency’s Position

Agency asserts in its Answer that this Office lacks the jurisdiction to adjudicate this appeal. Agency argues that Employee resigned from his position, and therefore, OEA has no jurisdiction over this matter.³ Further, Agency argues that even if this Office determined that Employee’s resignation was invalid, Employee filed his Petition for Appeal outside of the thirty (30) day time period required to file. Agency indicates that the effective date of removal if Employee had not resigned would have been November 27, 2015. Agency asserts that Employee did not file his appeal until January 20, 2016, which is over thirty (30) days from the effective date.

Jurisdiction

This Office’s jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (“CMPA”), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B

¹ Employee’s Petition for Appeal at attached Final Agency Notice dated November 18, 2015 (January 20, 2016).

² Agency’s Answer to Employee’s Petition for Appeal at Exhibit 8 (February 4, 2016).

³ *Id.* at Page 1 (February 4, 2016).

of the District of Columbia Municipal Regulation (“DCMR”) § 604.1⁴, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as “[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.” This Office has no authority to review issues beyond its jurisdiction.⁵ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁶

Resignation

In the instant matter, Employee concedes that he resigned from his position.⁷ While Employee asserts that his involvement in the altercation which ultimately led to his resignation was in self-defense, Employee does not indicate or otherwise proffer that his resignation was done involuntarily. Although the question of whether a resignation is voluntary or involuntary has been considered in several cases before this Office, in this matter there is no evidence in the record that suggests Employee’s resignation was involuntary. A typical matter before this Office concerning whether a resignation was voluntary or involuntary, usually involves an employee who resigns and then appeals to OEA, arguing that their resignation was the result of coercion, duress or constructive discharge.⁸ When determining whether a resignation was voluntary or involuntary, this Office aligns with the seminal case in the federal sector on this issue, *Christie v. United States*.⁹ However, in the instant matter, Employee does not make any arguments that his resignation was coerced or was a result of duress, and there is no other evidence in the record by which it could otherwise be concluded that his resignation was involuntary. Further, Employee never denied that he resigned from his position.¹⁰

Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a “preponderance of evidence. I have determined that Employee did not meet this burden.

⁴ See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

⁵ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁶ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁷ Employee’s Brief on Jurisdiction (March 16, 2016).

⁸ See, e.g., *Jefferson v. Department of Human Services*, OEA Matter No. J-0043-93, 47 D.C. Reg. 1587 (2000); *Alston v. D.C. Office of Department of Contracting and Procurement*, OEA Matter No. 1601-0010-09 (May 5, 2009); *Moore v. Office of the State Superintendent of Education*, OEA Matter No. J-0114-14 Initial Decision (September 25, 2014).

⁹ *Christie v. United States*, 518 F.2d. 584 (Ct. Cl. 1975).

¹⁰ Employee’s Brief on Jurisdiction (March 16, 2016).

This Office has consistently held that it lacks jurisdiction over voluntary resignations.¹¹ Because OEA does not have jurisdiction to hear this matter, the undersigned is precluded from any further review of the arguments proffered by Employee. For these reasons, I find that OEA lacks jurisdiction to adjudicate this matter.

Untimely Filing of Petition for Appeal

Additionally, pursuant to OEA Rule 604.2, an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed action. The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.¹² In the instant matter, the Final Agency decision dated November 18, 2015, indicated an effective termination date of November 27, 2015. Employee filed his Petition for Appeal on January 20, 2016. Assuming *arguendo* that Employee's appeal could be adjudicated by this Office, (*it is precluded given Employee's voluntary resignation*), the filing of the appeal on January 20, 2016, was untimely, as it was outside of the thirty (30) day mandatory time limit.

Although this Office has held that the statutory thirty (30) day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature;¹³ there is an exception whereby, a late filing will be excused if an agency fails to provide the employee with "adequate notice of its decision and the right to contest the decision through an appeal."¹⁴ Here, Employee never raised any issues regarding notice of his appeal rights. Additionally, based on the evidence submitted in the record, in the Final Agency Decision dated November 18, 2015,¹⁵ Agency provided Employee with adequate notice of his appeal rights and other information as required by OEA Rule 605.1.¹⁶ If Employee had not resigned, the effective date of termination would have been November 27, 2015. Accordingly, Employee would have needed to file his appeal to this Office by December 26, 2015 for it to be timely in accordance with OEA Rule 604.2. For these reasons, I find that OEA has no jurisdiction to adjudicate this matter and this matter must be dismissed.

¹¹ *Evans v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0055-11, *Opinion and Order on Petition for Review* (December 10, 2014).

¹² *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

¹³ *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

¹⁴ OEA Rule 605.1; *See also Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, *Opinion and Order on Petition for Review* (June 27, 2008) citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003); *Jones v. D.C. Public Schools, Department of Transportation*, OEA Matter No. 1601-0077-09, *Opinion and Order on Petition for Review* (May 23, 2011).

¹⁵ Agency's Answer to Employee's Petition for Appeal at Exhibit 6 (February 4, 2016).

¹⁶ OEA Rule 605.1, 59 DCR 2129 (March 16, 2012), requires that "when an agency issues a final decision to an employee on a matter appealable to this Office, the agency shall at the same time provide the employee with a written copy of all of the following: (a) employee's right to appeal to the Office; (b) The rules of the Office; (c) the appeal form of the Office (d) notice of the applicable rights to appeal under a negotiated review procedure; and (e) notice of the right to representation by lawyer or other representative authorized by the rules."

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge