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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CHANTI MIDDLETON,)	
Employee)	OEA Matter No. J-0118-14
)	
v.)	Date of Issuance: November 4, 2014
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	
)	
)	Arien Cannon, Esq.
_____)	Administrative Judge
Chanti Middleton, Employee, <i>Pro se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Chanti Middleton (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on August 28, 2014, challenging the Office of the State Superintendent of Education’s (“Agency” or “OSSE”) decision to terminate her. I was assigned this matter on September 8, 2014. An Order on Jurisdiction was issued on October 3, 2014, which required Employee to provide a statement of reason(s) why she believes this Office may exercise jurisdiction over her appeal. Employee filed her response on October 20, 2014. The record is now closed.

ISSUE

Whether OEA may exercise jurisdiction over Employee’s appeal.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether this Office has jurisdiction over Employee's appeal. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . . *Any appeal shall be filed within 30 days of the effective date of the appealed agency action.*

OEA Rule 604.2 also provides that an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed agency decision.¹ Here, Employee's proposed termination letter, dated June 14, 2012, advised Employee that unless the proposed termination is reversed or amended by an administrative review that the effective date of her termination would be June 29, 2012. The official termination letter was issued on June 29, 2012, and informed Employee that she may file an appeal with the Office of Employee Appeals within thirty (30) calendar days of June 29, 2012 final decision. Employee's termination became effective on June 29, 2012. Employee filed her Petition for Appeal with this Office on August 28, 2014.

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he *employee* shall have the burden of proof as to issues of jurisdiction..." The burden of proof is defined under a preponderance of the evidence standard. Preponderance of the evidence means "[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."²

On October 3, 2014, Employee was ordered to set forth her reasons as to why this Office may exercise jurisdiction over her appeal. Employee filed her response to the Order on Jurisdiction on October 20, 2014. Employee seems to argue the merits of her case rather than address the jurisdiction issue presented. The letter regarding the final decision on Employee's removal was issued on June 29, 2012. This letter provided that Employee was entitled to appeal the removal action *within thirty (30) days*. Employee filed her appeal with this Office on August 28, 2014, more than two years after being terminated. When Employee filed her appeal on August 28, 2014, it was well beyond the thirty (30) day limit prescribed in D.C. Code § 1-606.03.³

This Office has no authority to review issues beyond its jurisdiction. The time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional matters. *See Zollicoffer v. District of Columbia Pub. Sch.*, 735 A.2d 944 (D.C. 1999) (quoting *District of Columbia Pub. Emp. Relations Bd. v. District of Columbia Metro. Police Dep't*, 593 A.2d 641,

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.1, 59 DCR 2129 (March 16, 2012).

³ Despite it being unclear when the original Notice of Final Decision on Proposed Removal was issued, Employee's appeal is still untimely based on Agency's Amended Notice.

643 (D.C. 1991)). A failure to file an appeal within the required time period divests this Office of jurisdiction to consider the appeal. *See Id.* at 946. Because Employee filed her appeal well beyond the time limits set forth in OEA Rule 604.2 and D.C. Code § 1-606.03, and has not satisfied her burden of proof as to jurisdiction, this matter must be dismissed.

ORDER

Based on the aforementioned, it is **ORDERED** that Employee's Petition for Appeal is hereby **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge