

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
Charmaine Hicks	)	OEA Matter No. J-0008-15
Employee	)	
	)	Date of Issuance: May 12, 2015
v.	)	
	)	Joseph E. Lim, Esq.
Office of the State Superintendent of Education	)	Senior Administrative Judge
_____	)	
Agency	)	
Charmaine Hicks, Employee <i>pro se</i>		
Jesus Aguirre, Agency Director		

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Charmaine Hicks (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“Office”) on October 20, 2014. She appealed Office of the State Superintendent of Education’s (“Agency “) final decision dated November 12, 2013, to remove her from her position as a Bus Attendant, effective November 12, 2013, as a result of “Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: Neglect of Duty.”<sup>1</sup>

This matter was assigned to me on or about October 31, 2014. On November 6, 2014, I issued an Order directing Employee to submit legal and/or factual argument to support her position that this appeal should not be dismissed for lack of jurisdiction. Employee submitted her response and the record is now closed.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this matter be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

The following facts are not subject to genuine dispute:

\_\_\_\_\_  
<sup>1</sup> See section 1614 and 1603.3 (f)(3) of Chapter 16 of the D.C. personnel regulations, General Discipline and Grievances.

1. Employee has worked as a Bus Attendant for Agency for approximately 14 years.
2. On October 4, 2013, Agency served her an Advance Notice of Adverse Action charging her with “Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: Neglect of Duty.”
3. Employee submitted a written response on October 8, 2013.
4. In a final decision dated November 12, 2013, Agency removed her from her position as a Bus Attendant, effective November 12, 2013. At the time of the removal, Employee was in permanent status and in the Career Service.
5. The notice advised Employee that she could elect to file an appeal with the Office of Employee Appeals within thirty calendar days.
6. This final decision advised Employee of her appeal rights to this Office and listed the Office’s address and telephone number. Attached to the decision was a copy of the Office’s Petition for Appeal Form.
7. It was not until October 20, 2014, almost a year after the effective date of her termination, and almost a year after she received her notice of the separation, that Employee filed the instant petition for appeal with the Office.

OEA Rule 628.2, 59 D.C. Reg. 2129, reads as follows: “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” According to OEA Rule 628.1, *id*, a party’s 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.”

Prior to October 21, 1998, the Comprehensive Merit Personnel Act (CMPA), D.C. Law 2-139, D.C. Official Code § 1-601.01 *et seq.* (2001), did not contain a time limit for filing a petition for appeal in this Office. Rather, the Office’s Rules and Regulations in effect at that time required a petition for appeal to be filed within 15 business days of the effective date of the action being appealed. *See* OEA Rule 608.2, 39 D.C. Reg. 7408 (1992). Because the filing requirement was not mandated by statute, the Office’s Rules specifically permitted an Administrative Judge to waive the requirement for good cause shown. *See* OEA Rule 602.3, 39 D.C. Reg. at 7405 (1992).

However, effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Among these amendments was the addition of a statutory time limit for filing an appeal in this Office. The relevant section reads as follows: “Any appeal shall be filed within 30 days of the effective date of the appealed agency action.” D.C. Official Code § 1-606.03(a) (2001). The Office’s Rules and Regulations have been amended to reflect this change. *See* OEA Rules 604.1 and 604.2, 59 D.C. Reg. 2129 (2012).

The manner in which this time limitation is calculated is provided in OEA Rule 603.1: “In the computation of time periods which involve business days, the first day counted shall be the next business day following the day the event occurs from which the time period begins to run. In the computation of time periods which involve calendar days, the first day counted shall be the next calendar day following the day the event occurs from which the time period begins to run. For calendar days, 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.”

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. *See, e.g., District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985). Following these cases, this Office’s Board has held that that the statutory 30-day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature. *See King v. Department of Corrections*, OEA Matter No. T-0031-01, *Opinion and Order on Petition for Review* (October 16, 2002).

The only exception that this Board has established is that it will excuse a late filing if an agency has failed to provide the employee with “adequate notice of its decision and the right to contest the decision through an appeal”. *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003).

Employee filed her petition on October 20, 2014, almost a year after the effective date of her termination. It was not filed in a timely manner. In this matter, Employee does not claim that she was unaware of the filing deadline. Indeed, the November 12, 2013, notice from Agency to Employee notifying her that she would be separated from service with Agency, effective the same day, informs her that she has thirty (30) calendar days of the effective date of the termination to file an appeal. Agency provided Employee with the appropriate notice of her appeal rights, a copy of OEA Rules, information regarding its website, and an appeal form. Having been afforded the appropriate notice, this petition does not fall within the exception discussed above.

In her brief, Employee sidesteps the issue of jurisdiction entirely. Instead, Employee repeats her opinion that her termination is unfair, and that she had followed Agency’s policies. Unfortunately, this did not deal with the threshold issue of jurisdiction.

The time limit is mandatory and jurisdictional. The Administrative Judge concludes that Employee did not meet the burden of proof on this issue and therefore she did not establish that this Office has jurisdiction of her appeal. The Administrative Judge concludes that the petition was untimely and should be dismissed for lack of jurisdiction.

#### ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.  
Senior Administrative Judge