

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Kenneth Johnson,) OEA Matter No. J-0089-15
Employee)
) Date of Issuance: November 10, 2015
v.)
) Senior Administrative Judge
Metropolitan Police Department,) Joseph E. Lim, Esq.
Agency)

Andrea Comentale, Esq., Agency Representative
Kenneth Johnson, Employee *pro se*

INITIAL DECISION

PROCEDURAL HISTORY

On June 18, 2015, Kenneth Johnson (“Employee”), a former Police Officer, filed an appeal with the Office of Employee Appeals (“OEA”) contesting Metropolitan Police Department (“Agency”)’s action of terminating him from his position. Agency answered by arguing that this Office lacks jurisdiction over this matter. On August 25, 2015, I ordered Employee to respond to Agency’s argument that this Office lack jurisdiction over his appeal. The parties have submitted their briefs. Based on the documents submitted, I find that an evidentiary hearing is unwarranted. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this matter.

ISSUE

The issue to be decided is whether this Office has jurisdiction in this matter

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, modified certain sections of the Comprehensive Merit Personnel Act (“CMPA”) pertaining to this Office. Of specific relevance to this case is § 101(d) of OPRAA, which amended § 1-606.03(a) of the *D.C. Official Code* (2001) 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.” As well, OEA Rule 628.2, 59 D.C. Reg. 2129 (March 16, 2012), states, “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of

filing.”

In addition, OEA Rule 604.2 states, “An appeal filed pursuant to Rule 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action. Further, OEA Rule 607.3 states: “The date of filing shall be the date the Office time stamps on the document.”

The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as OEA 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 (D.C. 1991) and *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162 (D.C. 1985). OEA’s Board has consistently held that the statutory thirty (30) day time limit is mandatory and jurisdictional in nature. *See, e.g., 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 the Board has established is that it will excuse a late filing where an agency neglected to provide an employee with the proper appeal rights notification. *Margaret Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, *Opinion & Order on Petition for Review* (June 27, 2008).

In his Petition for Appeal, Employee asserts that his employment was terminated in 1996; that he asked Agency for a trial board hearing for reinstatement on May 18, 2015; and that this request was denied by Agency on May 27, 2015.

Employee also makes several arguments to support a finding that his appeal is timely. One assertion is that his final decision letter is dated May 7, 2015. However, none of his submitted documents contain said letter. Thus, I find that Employee has failed to meet his burden of proof regarding an alleged May 7, 2015, letter.

Second, Employee alleges that he was not given any written notice and that Agency violated the 55-day rule. This rule is codified in Title V, Section 502, of the Omnibus Public Safety Agency Reform Amendment Act of 2004, D.C. Official Code § 5-1031 (2005 Supp.), which states that: “Commencement of corrective or adverse action. (a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency Medical Services Department or the Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.”

Again, Employee fails to submit any document or evidence that supports his position. One of the documents that he does submit, his Personnel Form 1 which documents his termination, states that the effective date of termination was April 18, 1996. It is undisputed that Employee filed his appeal with OEA on June 18, 2015, more than 30 days after the effective date of termination. Indeed, his appeal was filed more than eighteen (18) years late. It was not filed in a timely manner. As noted in the discussion above, the District of Columbia Court of Appeals

has held that the time limit for filing an appeal is mandatory and jurisdictional in nature

The other document Employee submits is a May 20, 2008, Washington Post news clipping that narrates how Police Chief Cathy Lanier was forced to reinstate seventeen (17) police officers who were fired for misconduct for violating the above cited 55-day rule. Again, Employee has not proved how this news clipping is relevant to his appeal.

If Employee is appealing Agency's May 27, 2015, alleged denial of a trial board hearing, then he has again failed to prove that this Office has jurisdiction over his appeal. The Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 ("OPRAA") amended certain sections of the D.C. Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, D.C. CODE § 1-601.1 *et seq.* ("CMPA"). Of specific relevance to this Office, § 101(d) of OPRAA amended § 1-603.1 of the Code by restricting the Office's jurisdiction to Employee appeals from the following personnel actions only: "(a) An employee may appeal 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. . . ."

Agency's alleged denial of Employee's request for a trial board hearing is not covered under any of the above provisions. Rather, Employee's allegation is a grievance over which this Office has no jurisdiction. His appeal from a grievance denial was filed on June 18, 2015, more than seventeen years after the Office's jurisdiction to hear such appeals expired.

Therefore, I conclude that this Office does not have jurisdiction over Employee's appeal. And for this reason, I am unable to address the factual merits, if any, of this matter.

ORDER

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

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge