

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Lauren Manning)	OEA Matter No. J-0043-18
Employee)	
)	Date of Issuance: July 3, 2018
v.)	
)	Joseph E. Lim, Esq.
D.C. Public Schools,)	Senior Administrative Judge
Agency)	
Lynette Collins, Esq., Agency Representative		
Lauren Manning, Employee <i>pro se</i>		

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

On April 17, 2018, Employee, a Bilingual Guidance Counselor, filed an appeal with this Office (Office of Employee Appeals or OEA) contesting Agency’s termination of Employee from her position effective March 12, 2018. By order issued on May 21, 2018, Employee was ordered to meet her burden of proof on jurisdiction as per OEA Rule 628.2.¹ Agency alleges that Employee’s appeal was untimely. Employee has not responded. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this matter.

ISSUE

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.

¹ 59 DCR 2129 (2012).

2129, states, “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” The only exception to the 30-day appellate rule would be a situation where an agency neglected to provide an employee with the proper appeal rights notification. Employee did not deny that she was provided the proper appellate rights notifications, including notification that she must file her appeal with the Office within 30 days of the effective date of Agency’s action.

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

I also take administrative notices of some relevant language from selected court cases. “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); *McCord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992). 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); *Volcy v. Office of State Superintendent of Education*, OEA Matter No. 1601-0111-16, *Opinion and Order on Petition for Review* (September 13, 2016).

Here, it is undisputed that Employee received that her final notice of adverse action on February 23, 2018. It is undisputed that Employee filed her appeal with the Office on April 17, 2018. In addition, in violation of my order, Employee has failed to respond to my Order on jurisdiction.

Regarding documents, OEA Rule § 621.3, 59 D.C. Reg. 2129 (2012), states, “If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to . . . b) Submit required documents after being provided with a deadline for such submission.”

I find that under the rules of this Office, a failure to submit required documents after being directed to do so, and when provided with a deadline for such submission, could result in sanctions, including dismissal. Therefore, I further conclude that Employee failed to prosecute her appeal, which is a sound cause for this matter to be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED with prejudice.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge