

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CARMESHA SIMMONS,)	
Employee)	OEA Matter No. J-0089-13
)	
v.)	Date of Issuance: August 5, 2013
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	
_____)	
CarMesha Simmons, Employee, <i>Pro se</i>)	Arien Cannon, Esq.
Sara White, Esq., Agency Representative)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Carmesha Simmons (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on May 10, 2013, challenging the D.C. Public Schools’ (“Agency”) decision to terminate her for falsification of official records and dishonesty. Specifically, Agency alleges that Employee collected unemployment insurance benefits in which she was not entitled. This matter was assigned to me on May 15, 2013. Agency filed its Answer on June 12, 2013. An initial review of Employee’s Petition for Appeal indicated that this Office may not have jurisdiction over this matter. An order regarding jurisdiction was issued on June 10, 2013, ordering Employee to set forth reasons why OEA may exercise jurisdiction over this matter. Employee submitted a response to the initial Order on Jurisdiction on June 21, 2013. After a phone conference with both parties, it was agreed that Employee would be granted an opportunity to re-file her response to the Jurisdiction Order to clarify the reasons why she felt this Office may exercise jurisdiction. Employee again submitted a response to the Jurisdiction Order on July 8, 2013. 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 Employee's termination letter dated February 10, 2012, advised that she must file her appeal with OEA within thirty (30) calendar days of the effective date of her termination. Here, Employee's termination became effective March 3, 2012. Employee filed her Petition for Appeal with this Office on May 10, 2013, more than a year after she was terminated.

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..." Pursuant to OEA Rule 628.1, 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."

On June 10, 2013, an order regarding jurisdiction was issued to allow Employee to set forth her reasons as to why this Office may exercise jurisdiction over her appeal. In response to the order regarding jurisdiction, Employee submitted medical records, presumably in an effort to demonstrate that she was experiencing health issues that inhibited her ability to file her appeal within the time frame set forth in OEA Rule 604. The medical records were not accompanied by any arguments or statements by Employee. Further, the medical records submitted were of a personal nature and the undersigned found them to be an inappropriate response to the Order on Jurisdiction.² Subsequently, a phone conference was held on June 25, 2013, at which time it was agreed by the parties that Employee would be granted the opportunity to submit another response to the Order on Jurisdiction to clarify her position as to why this Office may exercise jurisdiction over this matter.

On July 8, 2013, Employee submitted her second response to the Order on Jurisdiction. In this response, Employee asserts that she was unable to file her appeal with this Office because she was preparing herself for surgery.³ Employee also asserts that she had numerous doctor

¹ 59 DCR 2129 (March 16, 2012).

² The medical records submitted by Employee were personal in nature. As such, they were shredded and are not a part of the file.

³ See Response to Second Order on Jurisdiction (July 8, 2013).

appointments that precluded her from responding to the Notice of Proposed Disciplinary Action.⁴ Employee does not provide any arguments as to why her appeal was filed more than a year after her termination became effective.

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, 643 (D.C. 1991)). A failure to file a notice of appeal within the required time period divests this Office of jurisdiction to consider the appeal. *See Id.* at 946. In essence, because Employee filed beyond the time limits set forth in OEA Rule 604.2, 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

Carmesha Simmons, Employee
Sara White, Esq., Agency Representative

⁴ *Id.*