

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ANNIE KEITT,)	OEA Matter No. J-0082-09
Employee)	
)	Date of Issuance: January 26, 2011
)	
)	
D.C. PUBLIC SCHOOLS, DIVISION OF)	
TRANSPORTATION,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Annie Keitt (“Employee”) worked as a bus monitor with the D.C. Public Schools, Division of Transportation (“Agency”). On December 11, 2008, she received a notice from Agency terminating her from employment for gross negligence and jeopardizing the safety and well-being of a child. The notice alleged that Employee failed to visually inspect the bus after returning to the terminal, in accordance with the responsibilities of her position. Consequently, her failure to perform this responsibility resulted in a child being left on the school bus for approximately five hours.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) opposing the decision to terminate her and requesting that she be reinstated to her former

¹ *Petition for Appeal*, p. 4-5 (February 10, 2009).

position. Employee's Petition for Appeal included a letter addressed to Agency Administrator David Gilmore, which provided that another employee agreed to cover her duties while she went to use the ladies' room. Employee asserted that the other employee was negligent, not her. Lastly, she highlighted that her termination would have serious consequences on her and her family because at the time she was the head of household with two children in college.²

On September 9, 2009, the OEA Administrative Judge ("AJ") issued his Initial Decision. He held that due to Employee's untimely filing of her Petition, OEA lacked jurisdiction to consider the merits of her case. The AJ highlighted several cases issued by the District of Columbia Court of Appeals and OEA which provided that the time limit for filing an appeal with an administrative, adjudicatory agency is mandatory and jurisdictional in nature. Although Employee presented a reason for her late filing, the AJ held that he could not disregard the mandatory filing deadline.³ Therefore, because OEA lacked jurisdiction to consider her case, the AJ dismissed her appeal.⁴

Employee filed a Petition for Review on September 24, 2004. She argued that she believed she would be reinstated to her position on January 5, 2009, as asserted by Agency. She provided that she went to D.C. Department of Human Resources and spoke with a representative who informed her that she was listed as an "active employee with D.C. Public Schools." Moreover, Keith Pettigrew informed her not to file a Petition for Appeal because she would be

² *Id.*, 3, 8-9.

³ Employee contended that she did not file her appeal earlier because Keith Pettigrew, Agency's Director of Operations, informed her that she would be reinstated on January 5, 2009. The AJ reasoned that even if that were true, Employee should have filed her petition on January 6th after not being reinstated on January 5, 2009, instead of waiting two months later to file.

⁴ *Initial Decision* (September 9, 2009).

reinstated. Therefore, Employee requested a review of her case on this basis.⁵

D.C. Official Code § 1-606.03 provides that

“An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.”

Moreover, OEA Rule 604.2 provides that “an appeal filed pursuant to Rule 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action.” Therefore, Employee’s appeal should have been filed within 30 days of her December 11, 2008, effective date of termination. However, it was not filed until February 10, 2009, which was 61 days after the effective date.

Employee concedes in her Petition for Appeal that it was filed untimely because she relied on information allegedly given by an Agency representative.⁶ Although Employee’s argument for the late filing is compelling, OEA and the D.C. Court of Appeals have consistently held that time limits for filing appeals are mandatory in nature.⁷ In accordance with OEA Rule

⁵ *Petition for Appeal* (September 24, 2009).

⁶ *Employee’s Brief* (July 22, 2009).

⁷ *Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), ___ D.C. Reg. ___ () citing *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) and *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *James Davis v. Department of Human Services*, OEA Matter No. 1601-0091-02, *Opinion and Order on Petition for Review* (October 18, 2006), ___ D.C. Reg. ___ (); *Damond Smith v. Office of the Chief Financial Officer*, OEA Matter No. J-0063-09, *Opinion and Order on Petition for Review* (December 6, 2010), ___ D.C. Reg. ___ (); and *Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010), ___ D.C. Reg. ___ ().

629.2, Employee has the burden of proving issues of jurisdiction including the timeliness of his filing. Because Employee failed to prove that her petition was timely filed with OEA, we must dismiss her case.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is
DISMISSED.

FOR THE BOARD:

Clarence Labor, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.