

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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:)	
)	
DONNA PIXLEY,)	
Employee)	OEA Matter No. J-0015-15
)	
v.)	
)	Date of Issuance: June 21, 2016
D.C. PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Donna Pixley (“Employee”) worked as a Registrar with the D.C. Public Schools (“Agency”). She was removed from her position for “other conduct during and outside of duty hours that would affect adversely the employee's or the agency’s ability to perform effectively.” Specifically, she was terminated for engaging in a verbal disagreement, which lead to a physical altercation, with another Agency employee while at a school football game.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on January 13, 2014. She argued that the termination action was not justified. Therefore, she requested that she be reinstated to her position with retroactive pay.²

The OEA Administrative Judge (“AJ”) issued an order to Employee requesting a legal

¹ *Petition for Appeal*, p. 6 (November 13, 2014).

² *Id.* at 2.

brief on whether her appeal should be dismissed due to her untimely filed Petition for Appeal. Employee had until December 5, 2014, to file her brief.³ However, no brief was submitted.

Accordingly, the AJ issued her Initial Decision on December 10, 2014. She held that Employee had thirty days from the effective date of the termination action to appeal her termination. The effective date of her termination was September 5, 2014. However, Employee did not file her appeal until November 13, 2014, which was beyond the thirty-day deadline. Therefore, the AJ dismissed her appeal for lack of jurisdiction.⁴

Employee filed a Petition for Review with the OEA Board on January 14, 2015. She asserts that she was a member of the American Federation of State, County, and Municipal Employees (“AFSCME”) Local 2921. As a result, under the terms of her Collective Bargaining Agreement (“CBA”), a formal hearing could have been held to potentially modify her termination action. Because she was confident that her termination would be overturned, Employee explained that she “elected to wait” until she received a response from Agency.⁵

Agency filed a response to Employee’s Petition for Review on April 14, 2015. It argues that the AJ’s decision was based on substantial evidence. Agency contends that Employee’s petition was untimely filed. Therefore, OEA lacked jurisdiction over her case. Accordingly, it requests that Employee’s Petition for Review be dismissed.⁶

D.C. Official Code § 1-606.03(a) provides the following:

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 force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to

³ *Order Requesting Brief* (November 21, 2014).

⁴ *Initial Decision*, p. 2-3 (December 10, 2014).

⁵ *Petition for Review*, p. 1-2 (January 14, 2015).

⁶ *District of Columbia Public Schools’ Response to Petition for Review* (April 14, 2015).

subchapter XVI-A of this chapter) to 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* (emphasis added).

Similarly, OEA Rule 604.2 provides that “an appeal filed pursuant to § 604.1 must be filed within thirty (30) calendar days of the effective date of the appealed agency action.” As the AJ provided, Agency issued Employee’s notice of termination on August 19, 2014. The effective date of the action was September 5, 2014. Therefore, in accordance with the D.C. Official Code and OEA Rule 604.2, Employee had until October 6, 2014, to file her appeal with OEA.⁷ She did not file her Petition for Appeal until November 13, 2014. This is well past the thirty-day deadline.

Moreover, the D.C. Court of Appeals held in *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991), that “the time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters.”⁸ As a result, OEA has consistently held that the time limit for filing Petitions for Appeals is mandatory in nature.⁹ Thus, OEA lacks the authority to extend the filing deadlines. Consequently, Employee’s Petition for Review is

⁷ The thirty-day deadline fell on October 5, 2014, but because that was a Sunday, October 6, 2014, was the actual filing deadline. In accordance with OEA Rule 603.1, “. . . 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.”

⁸ See also *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) (citing *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 635 (D.C.1985); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C.1985); *Gosch v. District of Columbia Department of Employment Services*, 484 A.2d 956, 958 (D.C.1984); and *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C.1980)).

⁹ *Chanti Middleton v. Office of State Superintendent of Education*, OEA Matter No. J-0118-14 (November 4, 2014); *Michael Gamboa v. Department of Youth Rehabilitation Services*, OEA Matter No. J-0082-14 (November 10, 2014); *Charmaine Hicks v. Office of State Superintendent of Education*, OEA Matter No. J-0008-15 (May 12, 2015); *Derek Gasden v. Department of General Services*, OEA Matter No. J-0065-14, *Opinion and Order on Petition for Review* (February 16, 2016); *Tenecia Mosley v. D.C. Public Schools*, OEA Matter No. J-0014-16 (February 24, 2016); and *Geraldine Tally Hobby v. D.C. Public Schools*, OEA Matter No. J-0100-14, *Opinion and Order on Petition for Review* (March 29, 2016).

dismissed.¹⁰

¹⁰ This Board also finds that Employee's argument that she wanted to wait for Agency's decision to modify her termination lacks merit. Agency informed Employee in its termination notice that she had thirty days to appeal its action to OEA. *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, Tab #1 (December 15, 2014). There was no language in the notice that indicated that the appeal deadline was stayed pending a decision of modification. Moreover, Employee could have filed a timely appeal with OEA, and if Agency did modify its action, she could have withdrawn her appeal with OEA at that time. Unfortunately, Employee took an ill-advised, calculated risk that did not benefit her.

ORDER

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

FOR THE BOARD:

Sheree L. Price, Interim Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.