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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No. J-0126-05
TONY OLDS	)	
Employee	)	Date of Issuance: January 6, 2006
v.	)	
	)	
D.C. FIRE AND EMERGENCY	)	Lois Hochhauser, Esq.
MEDICAL SERVICES	)	Administrative Judge
DEPARTMENT	)	
Agency	)	

Tony Olds, Employee  
Theresa Cusick, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition for appeal with the Office of Employee Appeals (OEA) on September 13, 2005, appealing his termination, which had an effective date of September 24, 2004. On September 29, 2005 Agency filed a motion to dismiss arguing that an *Initial Decision* had been issued in this matter on June 7, 2005, and that Employee was notified of his right to file a petition for review but did not do so. Agency also contended that this matter was untimely filed.

The matter was assigned to this Administrative Judge on or about November 3, 2005. On November 9, 2005, the Administrative Judge issued an Order directing Employee to submit legal and/or factual argument regarding this Office's jurisdiction based on lack of timeliness of filing and on mootness. Employee was notified that he had the burden of proof

on all issues pertaining to jurisdiction. The parties were advised that unless they were notified to the contrary, the record would close on November 30, 2005. Employee submitted a timely response. The record closed on November 30, 2005.

### JURISDICTION

This Office's jurisdiction has not been established.

### ISSUE

Should this petition for appeal be dismissed?

### ANALYSIS AND CONCLUSION

Employee had filed a petition for appeal with OEA on February 2, 2005 challenging Agency's action of terminating his employment. That appeal was docketed as OEA Matter No. J-0021-05. In both the notice of termination and in Employee's February 2, 2005 petition for appeal, Employee was identified as being in a probationary status at the time of the termination.

On February 10, 2005, the Administrative Judge had issued an Order directing Employee to submit legal and/or factual argument in support of this Office's jurisdiction based on his probationary status. Employee was notified that his failure to respond "could result in the dismissal of the petition without further notice". The parties were also notified the record would close on March 1, 2005 unless they were notified to the contrary. The Order was sent to Employee's last known address and was not returned to the Office. Employee did not respond to the Order and the record closed on March 1, 2005. On June 7, 2005, the petition for appeal in OEA Matter No. J-0021-05 was dismissed based on Employee's probationary status and on his failure to prosecute his appeal. A two page "Notice of Appeal Rights" was attached to the *Initial Decision*. The Notice stated that the decision would become final unless a petition for review was filed within thirty-five (35) calendar days of the issuance date of the decision. Employee did not file a petition for review.

In "Employee's Argument in Support of Jurisdiction" in the instant matter, Employee points out that he "initially filed a timely appeal", but that OEA "declined to exercise jurisdiction". He further states that he initially thought he was in probationary status, but that he was actually full time and not probationary. He stated that "[at] the time of the initial decision, Olds had supplied the OEA with a memorandum (attached hereto as Exhibit 'A') outlining his legal argument that he was a full time rather than a probationary employee".

Employee attached a seven page untitled and undated document regarding his status.<sup>1</sup> The Administrative Judge has carefully reviewed the official file of Matter No. J-0021-05 to ascertain if the document had been filed. In the normal course of business, a document is date stamped upon receipt and then placed in the official file. There is nothing in the official file or in Employee's submission that supports his contention that the submission was timely filed in the earlier matter. Although administrative errors may be made, a careful review of the official file has been made, and the document Employee states was submitted was not found. Employee has submitted no evidence that the document was timely filed. Something more than a bald assertion is needed, especially where there is no evidence in the record to support Employee's claim. In any event, if Employee had timely filed a pleading in the first matter, he would have had a basis for filing a petition for review. He was notified of his right to do so and the procedures that had to be followed. He did not file a petition for review. Assuming *arguendo* that the document had been filed in the earlier matter, it would not support his filing a new petition for appeal on the same matter.

This Office is not required to hear a matter that is moot or duplicative. *See, Featherstone v. University of the District of Columbia*, OEA Matter No. JT-0102-93, (August 2, 1994), \_\_\_ D.C. Reg. \_\_\_ ( ). Employee's petition for appeal is based on his removal. That removal was the subject of an earlier petition for appeal which was dismissed. Employee did not petition the Board to have that decision reviewed. There is no basis to hear this matter again.

In addition, this petition for appeal was not filed in a timely manner. A petition for appeal must be filed with OEA within thirty days of the effective date of the appealed agency action pursuant to OEA Rules 604.1 and 604.2, 46 D.C. Reg. at 9299. Employee filed this petition on September 13, 2005. His termination had an effective date of September 24, 2004. The petition was filed almost a year after his removal. In his response, Employee contends his first petition was filed in a timely manner.

Employee cannot rely on the timeliness of filing the first petition to establish timeliness for the second petition. The time limit for filing an appeal with this Office is mandatory and jurisdictional in nature. *See, e.g., White v. District of Columbia Fire Department*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (September 2, 1994), \_\_\_ D.C. Reg. \_\_\_\_\_. ( ).

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<sup>1</sup> The document has several duplicated pages.

Employees have the burden of proof on issues of jurisdiction, including timeliness of filings, pursuant to OEA Rule 629.2, 46 D.C. Reg. at 9317. For the reasons stated above, the Administrative Judge concludes that Employee did not meet this burden. She further concludes that the matter is moot. Therefore, she concludes the petition should therefore be dismissed.

ORDER

It is hereby:

ORDERED: the petition for appeal is DISMISSED.

FOR THE OFFICE:

  
\_\_\_\_\_  
LOIS HOCHHAUSER, Esq.  
Administrative Judge