

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

|                               |   |                                  |
|-------------------------------|---|----------------------------------|
| _____                         | ) |                                  |
| In the Matter of:             | ) |                                  |
|                               | ) |                                  |
| JEFFERY JOHNSON,              | ) |                                  |
| Employee                      | ) |                                  |
|                               | ) | OEA Matter No.: J-0076-11        |
| v.                            | ) |                                  |
|                               | ) | Date of Issuance: August 9, 2011 |
| D.C. DEPARTMENT OF INSURANCE, | ) |                                  |
| SECURITIES AND BANKING,       | ) |                                  |
| Agency                        | ) | SOMMER J. MURPHY, Esq.           |
| _____                         | ) | Administrative Judge             |

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On February 25, 2011, Jeffery Johnson (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the Department of Insurance, Securities and Banking’s (“Agency”) decision to terminate him. Agency’s notice informed Employee that he was being separated from service as a result of a Reduction-in-Force (“RIF”). Employee’s termination was effective on January 21, 2011.

This matter was assigned to me on or around April, 2011. I issued an Order on May 9, 2011, directing Employee to present legal and factual arguments to support his argument that this Office has jurisdiction over his appeal. Employee was advised that he had the burden of proof with regard to the issue of jurisdiction. Employee, through his union representative, submitted a response to the Order on May 20, 2011. Agency subsequently filed a response to Employee’s Brief on Jurisdiction on June 10, 2011. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

As will be explained below the Jurisdiction of this Office has not been established.

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked as an insurance examiner with Agency at the time he was separated from service. Agency notified Employee on December 17, 2010 that his position was being abolished as a result of budgetary issues. The letter provided that Employee could elect to file an appeal with this Office within thirty (30) calendar days of the effective date of the RIF. The notice further instructed employee to refer to an enclosed copy of OEA's appeal form, which provided instructions on filing an appeal.

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." OEA Rule 629.1, states that The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean: "[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."

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.3(a) states:

"An employee may appeal 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...."

Thus, §101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only: a performance rating that results in removal; a final agency decision affecting an adverse action for cause that results in removal, a reduction in grade, a suspension of 10 days or more, or a reduction-in-force.

The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.<sup>1</sup> Furthermore, in *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003), \_\_ D.C. Reg. \_\_\_\_ ( )<sup>2</sup>, it was held that the only situation in which an agency may not "benefit from the [30-day] jurisdictional bar" is when the agency

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<sup>1</sup> See, e.g., *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985). Following these cases, this Office's Board has held that that the statutory 30-day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature. See *King v. Department of Corrections*, OEA Matter No. T-0031-01, *Opinion and Order on Petition for Review* (October 16, 2002), \_\_ D.C. Reg. \_\_\_\_ ( ).

<sup>2</sup> OEA Matter No. J-0024-00 (May 5, 2003), \_\_ D.C. Reg. \_\_\_\_ ( ).

fails to give the employee “adequate notice of its decision and the right to contest the decision through an appeal.”

In response to the May 9, 2011 Order on Jurisdiction, Employee argued that: 1) he was on sick leave at the time Agency sent the notice of termination; and 2) Agency sent the RIF notice to the incorrect address. Employee submitted a copy of a May 15, 2011 email to his union representative, Stephen G. White, regarding his address of record. The email stated the following:

“Upon my return to the area, I received a call on my cell phone from the Human Resources Manager at DISP, Ernesto Rodriguez. To my surprise and disappointment, Mr. Rodriguez notified me of the DISB[s] decision to relieve me, along with other fellow employees, of our respective positions at DISB, as well as the District government...He explained to me that a termination of employment package sent by DISB was forwarded to my home address. Having received mailed correspondence from many sources during my absence and [not] seeing any correspondence from DISB, I thought I may have overlooked the package he said was sent to me...I informed him that the incorrect address that the DISB correspondence was sent to was not my home address, nor had it been my home address for over sixteen years...I provided him with my correct home address, 821 Fourth Street NE in the District and asked why wasn't the correspondence forwarded to my home address...I used my correct home address at all times since purchasing my home and couldn't understand how and why an incorrect home address for me was used....”

The reduction in force letter lists Employee's address as 1515 Van Buren Street, NW, Washington, DC 20012-2835. Agency's Personnel Action Form (Form 50) also reflects the same address. Peoplesoft, which is a District of Columbia Human Resource and Payroll system, allows employees the ability to update personal information via electronic format. Employee did not provided any supplemental documents to prove that he informed Agency of his new mailing address prior to the mailing of the RIF letter. It is the Employee's responsibility to apprise Agency if there is a change of their mailing address.

The effective date of the RIF was January 21, 2010; however, Employee did not file his appeal until February 25, 2011, more than thirty calendar days after the effective date of Agency's action. Although Employee stated that he did not receive notification of the RIF until approximately January 6, 2011, he still had thirty (30) days from the effective date of the RIF to file a petition for appeal with this Office.

Based on the foregoing reasons, I conclude that Employee has failed to proffer adequate evidence that he informed Agency of his updated and correct address prior to the implementation of the RIF. Agency sent the RIF notice to the last address of record on file for Employee. Employee has failed to meet his burden of proof by establishing that OEA has jurisdiction over this matter.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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SOMMER J MURPHY, ESQ  
ADMINISTRATIVE JUDGE

Jeffery Johnson  
821 4<sup>th</sup> St., NE  
Washington, DC 20002

Stephen White  
AFSCME Local 2743  
1724 Kalorama Rd., NW  
Suite 200  
Washington, DC 20009

Rhonda Blackshear. Esq.  
810 First Street, NE  
Suite 701  
Washington, DC 20002