

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:)	
)	
ADRIAN TURNER,)	
Employee)	OEA Matter No. J-0011-16
)	
v.)	Date of Issuance: December 30, 2015
)	
D.C. DEPARTMENT OF HEALTH,)	
Agency,)	
)	
)	Arien Cannon, Esq.
_____)	Administrative Judge
Adrian Turner, Employee, <i>Pro se</i>		
Andrea Comentale, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Adrian Turner (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on October 29, 2015, challenging the Department of Mental Health’s (“Agency”) decision to terminate his employment as a Psychiatric Nursing Assistant. Agency issued a Memorandum on March 20, 2009, informing Employee that his term appointment would end effective April 3, 2009.

I was assigned this matter on November 6, 2015. Agency filed its Answer on November 24, 2015. Based on an initial review of the file and Agency’s request that the appeal be dismissed for lack of jurisdiction, an Order on Jurisdiction was issued on November 30, 2015. This order required Employee to set forth his argument as to why this Office may exercise jurisdiction over his appeal. Employee’s response was due on or before December 14, 2015. Because Employee failed to respond to the initial Order on Jurisdiction, a Show Cause Order was issued on December 16, 2015, which required Employee to respond by December 24, 2015. To date, Employee has not responded to either the Order or Jurisdiction or the Show Cause Order. The record is now closed.

JURISDICTION

As set forth below, the jurisdiction of this Office has not been established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ANALYSIS AND CONCLUSION

OEA Rule 628.2 provides that Employee has the burden of proof for establishing jurisdiction.¹ Pursuant to OEA Rule 604 this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.²

Furthermore, OEA Rule 604 provides that an appeal must be filed within thirty (30) calendar days of the effective date of the agency's action. 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.³ A failure to file a notice of appeal within the required time period divests this Office of jurisdiction to consider the appeal.⁴

Here, the effective date of Employee's removal, which resulted with the conclusion of his term appointment, was April 3, 2009. Employee filed his appeal with this Office on October 29, 2015, more than six (6) years after he was removed from his position, well beyond the thirty (30) day time limit. Thus, I find that this Office lacks jurisdiction based upon the untimely filing of Employee's appeal.

Additionally, the District's Personnel Regulations provide, in pertinent part:

823.8 An employee serving under a term appointment shall not acquire permanent status on the basis of the term appointment, and shall not be converted to a regular Career Service appointment, unless the initial term appointment was through open competition within the Career Service and the employee has satisfied the probationary period.

823.9 Employment under a term appointment shall end automatically on the expiration of the appointment, unless the

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 604, 59 DCR 2129 (March 16, 2012); D.C. Official Code § 1-606.03.

³ 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)).

⁴ See *Id.*

employee has been separated earlier.

Although Employee argues that he had information in his file indicating that he was both a career and term employee, it is clear from the record that a corrected Notice of Personnel Action (SF-50) was processed. Two personnel action forms were approved on April 8, 2005; the first inadvertently listed the nature of the action as a career appointment. The second personnel action form indicated that Employee was hired as a Psychiatric Nursing Assistant under a term appointment, which was effective on April 4, 2005. The term appointment was NTE (“Not to Exceed”) April 3, 2009.⁵ The second corrected personnel action was consistent with the information contained in the Conditions of Employment under Term Appointment form that Employee signed and acknowledged on March 31, 2005.⁶ Thus, I also find that OEA lacks jurisdiction based upon Employee’s expired term appointment on April 3, 2009.

In the alternate, and in accordance with OEA Rule 621.3⁷, this Office has long maintained that a Petition for Appeal may be dismissed when an employee fails to prosecute the appeal. Here, an Order on Jurisdiction was issued on November 30, 2015, which required Employee to address why his appeal should not be dismissed for lack of jurisdiction. A response to the Jurisdiction Order was due on or before December 14, 2015. Employee did not respond to the Jurisdiction Order. Subsequently, a Show Cause Order was issued on December 16, 2015, which required that Employee provide a statement of good cause for failure to respond to the Jurisdiction Order. To date, Employee has not responded to the Order on Jurisdiction or the Show Cause Order.

OEA Rule 621.3 provides that if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action. Failure of a party to prosecute or defend an appeal includes submitting required documents after being provided with a deadline for such submission. Here, Employee has failed to respond to the Jurisdiction Order and the Show Cause Order. Thus, I find that Employee’s appeal shall be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that Employee’s Petition for Appeal is **DISMISSED** for lack of jurisdiction, and in the alternate, **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁵ Agency Answer, Exhibit 5 (November 24, 2015).

⁶ *Id.*, Exhibit 3.

⁷ 59 DCR 2129 (March 16, 2012).