

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:)	
)	
EULA LAW,)	
Employee)	OEA Matter No. J-0005-19
)	
v.)	
)	
D.C. DEPARTMENT OF YOUTH)	Date of Issuance: March 26, 2019
REHABILITATION SERVICES,)	
Agency)	Michelle R. Harris, Esq.
)	Administrative Judge
_____)	
Eula Law, Employee, <i>Pro Se</i>		
Rahsaan Dickerson, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 11, 2018, Eula Law (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) decision to remove her from her positions as a Correctional Officer, effective September 4, 2018. Agency filed its Answer on November 16, 2018. This matter was assigned to the undersigned Administrative Judge (“AJ”) on December 5, 2018. On December 12, 2018, I issued an Order scheduling a Prehearing Conference for January 11, 2019. On January 7, 2019, Employee requested an extension of time to seek legal counsel. As a result, I issued an Order on January 9, 2019, rescheduling the Prehearing Conference for February 15, 2019.

Both parties appeared for the Prehearing Conference on February 15, 2019. Following the Prehearing Conference, I issued a Post Prehearing Conference Order codifying verbal orders that were prescribed during the hearing. Because Agency raised an issue with regard to whether OEA has jurisdiction over this matter, I required Employee to submit a brief addressing the jurisdiction issue. Employee’s brief was due on or before March 11, 2019. Agency had the option to reply on or before March 25, 2019. Employee submitted her brief on March 11, 2019. I determined that an Evidentiary Hearing was not warranted. The record is now closed.

JURISDICTION

This jurisdiction of this Office has not been established.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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:

That 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.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

As previously stated, OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), indicates that the “employee shall have the burden of proof as to issues of jurisdiction...” In accordance with this rule, the burden of proof is by a preponderance of the evidence which is defined as “that 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.” OEA has no authority to review issues beyond its jurisdiction.¹ Therefore issues regarding jurisdiction may be raised at any time during the course of the proceeding before this Office.²

Pursuant to D.C. Official Code §1-606.03, a district government employee shall initiate an appeal by filing a Petition for Appeal with OEA, which must be filed within thirty (30) calendar days of the effective date of the action being appealed.³ The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative y agency like OEA is mandatory and jurisdictional in nature.⁴ This Office has consistently held that the statutory thirty (30) day time limit for filing an appeal in this Office is mandatory, but that there is exception whereby a late filing

¹ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1601-0030-90, Opinion and Order on Petition for Review (September 30, 1992).

² See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia General Hospital*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

³ D.C. Official Code § 1-606.03.

⁴ See also *Rebecca C. Barnes v. Office of Employee Appeals and District of Columbia Public Schools*, No. 12-CV-0892 (June 13, 2017); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 641 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

may be excused if an agency fails to provide the employee with “adequate notice of its decision and the right to contest the decision through an appeal.”⁵

In the instant matter, Employee’s effective date of termination was September 4, 2018. As a result, Employee had thirty (30) calendar days from September 4, 2018, to file a Petition for Appeal with OEA, but failed to do so. Employee cited that a letter was delivered to her home on August 3, 2018,⁶ but that she “couldn’t have signed for it because she was hospitalized from July 31, 2018, through August 7, 2018.”⁷ Employee asserts that when she returned home on August 7, 2018, she was confused by the letter because she thought it was an old letter regarding termination that had been rescinded.⁸ Employee cited that she notified her Union, and was informed that Agency was removing her. Employee also argued that she contacted human resources, and her union again to help with possible arbitration. Employee also indicated that she went into a treatment facility on July 31, 2018. Agency maintains that Employee failed to respond by the statutory guidelines and as a result OEA lacks jurisdiction over this matter.⁹

Upon review of the documents submitted to this Office, it appears that while Employee may have been confused about the method through which her matter could be appealed (union and/or arbitration), that Employee was notified of her appeal rights to this Office. Employee never indicated that she did not receive the forms or otherwise. The Final Notice dated August 31, 2018, also informed Employee of her appeal rights to OEA and that she had thirty (30) days from the effective date to file an appeal with this Office. Therefore, Employee would have needed to file her appeal on or before October 5, 2018, to be in compliance with this mandate. Employee did not file an appeal with this Office until October 11, 2018. As a result, I find that Employee’s Petition for Appeal was filed untimely. Consequently, I further find that OEA does not have jurisdiction over Employee’s appeal, and for these reasons I am not able to address the merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Michelle R. Harris, Esq.
Administrative Judge

⁵ *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999); see also OEA Rule 605.1, 50 DCR 2129 (March 16, 2012); *Rebello v D.C. Public Schools*, OEA Matter No. 2401-0202-04, Opinion and Order on Petition for Review (June 27, 2008) citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003).

⁶ Employee indicated that the date was “August 3, 2019”, however the undersigned has presumed that this is an error given the timeline and current calendar date.

⁷ Employee’s Reply on Jurisdiction (March 11, 2019).

⁸ Employee’s Reply on Jurisdiction (March 11, 2019).

⁹ Agency made this assertion at the Prehearing Conference held on February 15, 2019.