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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LAURA HASSAN,)	
Employee)	OEA Matter No. J-0003-14
)	
v.)	Date of Issuance: November 7, 2013
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, Esq.
_____)	Senior Administrative Judge
Laura Hassan, Employee <i>Pro-Se</i>		
Carl K. Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Laura Hassan (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools (“DCPS” or “the Agency”) adverse action of removing her from service. Employee’s petition for appeal was date stamped as received by the OEA on October 4, 2013. Employee’s petition for appeal was postmarked October 2, 2013, by the United States Postal Service. Of note, according to a letter dated August 12, 2013, sent by DCPS addressed to Employee regarding her Notice of Termination (“Termination Letter”), the effective date of Employee’s removal from service was August 31, 2013. I was assigned this matter on or about October 11, 2013. After reviewing the Employee’s petition for appeal, I determined that there existed a question as to whether the OEA has jurisdiction over the instant appeal. Consequently, I issued an order on October 18, 2013, requiring Employee to address said issue in a written brief. Employee complied with said order. After carefully reviewing the Employee’s response, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628 *et al*, 59 DCR 2129 (March 16, 2012) states:

628.1 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 the 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.

628.2 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

According to the Termination Letter, the Employee was informed that the effective date of her termination was August 31, 2013. The Termination Letter further provided in relevant part that “[i]f you file an appeal with the OEA, you must do so within 30 calendar days of the effective date of your termination. A copy of the OEA Rules and appeal form are enclosed.”

As was mentioned previously, Employee was removed from service with an effective date of August 31, 2013. However, her petition for appeal was date stamped as received by the OEA on October 4, 2013 and the United States Postal Service stamp on the envelope containing Employee’ petition or appeal was postmarked October 2, 2013. I find that both dates are past the 30 day filing deadline. *See* OEA Rule 604.2, 59 DCR 2129 (March 16, 2012).

In her response to my order dated October 18, 2013, Employee states the following “I counted and I mailed my appeals form on 9/28/13 hoping that it would get to your office by 9/30/13 especially since I sent it by return receipt. I assume that since I live in the Metro DC area (Columbia, Maryland) it would get there in time.” Employee then alleges that the some pages from the OEA appeals form given to her by DCPS were missing and that she was having difficulties accessing the OEA website. She allegedly talked to an unnamed OEA representative who informed Employee that as long as her forms were postmarked before the 30 day calendar deadline that her filing would be accepted.

Employee alleges that she mailed her petition for appeal on September 28, 2013. If this were true, then her appeal would be timely. However, the postmark for her appeal form included within the record clearly states that her appeal was mailed on October 2, 2013. Moreover, in her response to my order dated October 18, 2013, Employee did not include a copy of the return receipt that she alleges she obtained when she mailed her petition for appeal to the OEA. I also note the discrepancy between Employees’ allegations of how and when she filed her documents versus the actual postmark that appears on her letter. Given the effective date of her removal (August 31, 2013), Employee’s petition for appeal would have had to have been date stamped by

the OEA, or at the very least postmarked, on or before October 1, 2013, in order to be considered a timely submission. Taking all of this into consideration, I find that Employee mailed her petition for appeal form on October 2, 2013. Consequently, I find this date is past the 30 day filing deadline. *See* OEA Rule 604.2, 59 DCR 2129 (March 16, 2012).

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”) modified certain sections of the Comprehensive Merit Personnel Act (“CMPA”) pertaining to this Office. Of specific relevance to this matter is § 101(d) of OPRAA, which amended § 1-606.3(a) of the Code (§ 603(a) of the CMPA) in pertinent part as follows: “Any appeal [to this Office] shall be filed within 30 days of the effective date of the appealed agency action.”

“The starting point in every case involving construction of a statute is the language itself.” *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). “A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language.” *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980). Further, “[t]he time limits for filing with administrative adjudicatory agencies, as with the courts, are mandatory and jurisdictional matters.” *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991).

As was stated previously, OPRAA “clearly and unambiguously” removed appeals filed more than 30 calendar days after the effective date of the action being appealed from the jurisdiction of this Office. “Further, the 30-day filing deadline is statutory and cannot be waived.” *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999), ___ D.C. Reg. ___ (). Moreover, OEA Rule 604 *et al*, 59 DCR 2129 (March 16, 2012) provides as follows:

604.1 Except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01, *et seq.* (2006 Repl. & 2011 Supp.)) or §604.2 below, any District of Columbia government employee may appeal 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.

604.2 **An appeal filed pursuant to § 604.1 must be filed within thirty (30) calendar days of the effective date of the appealed agency action.**

Emphasis Added.

I find that the Termination Letter adequately warned Employee of her option to personally appeal to the OEA in a timely manner. However, because Employee failed to file a petition for appeal in the instant matter with the OEA within the 30 day filing deadline, I find that she is precluded from pursuing said appeal through the OEA.

Based on the foregoing, I further find that the Employee has not established that this Office has jurisdiction over this matter. Because of the Employee's failure to timely file her petition for appeal with the OEA, I conclude that I must dismiss this matter for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.¹

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge

¹ Since Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of any arguments that Employee noted in her petition for appeal.