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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MARGARET REBELLO,)	OEA Matter No. 2401-0202-04
Employee)	
)	Date of Issuance: June 27, 2008
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Margaret Rebello (“Employee”) worked as a teacher with the District of Columbia Public Schools (“Agency”). Agency issued a notice to Employee informing her that her position would be abolished on June 30, 2004; the notice was dated May 27, 2004. It provided that Employee had 30 days from the effective abolishment date in which to appeal to the D.C. Office of Employee Appeals (“OEA”).¹

Employee filed a Petition for Appeal with OEA on August 2, 2004, alleging that other teachers who lacked certification were kept on staff while she was removed.

¹ *Petition for Appeal*, Attachment #1 (August 2, 2004).

Employee also made claims of unequal employment opportunities, racism, and discrimination. She reasoned that she was removed because of her membership in the Washington Teacher's Union. Employee requested a hearing to prove that she was improperly removed.²

On February 7, 2005, Agency filed its Response to Employee's Petition for Appeal. Agency requested that the Administrative Judge ("AJ") dismiss Employee's appeal because it was untimely filed. It provided that the appeal should have been filed on July 30, 2004. However, Employee did not file her Petition for Appeal until August 2, 2004. Agency also asserted that Employee's removal was not flawed.³

The AJ issued an Order to Employee regarding the timeliness of her filing. He provided that the 30-day filing requirement was mandatory. Thus, the only way he could proceed was if Employee could actually prove that her Petition for Appeal was filed by the July 30, 2004, deadline or postmarked by that date.⁴

Employee filed a response to the AJ's Order on July 8, 2005. She claimed that after she received a copy of the Petition for Appeal form from OEA, she completed and signed it on the 30th.⁵ She stated that she would provide OEA with proof that she filed the petition prior to the deadline.⁶ In her response, she also alleged that Agency did not send her a copy of the OEA Rules. Additionally, Employee claimed that Agency failed to inform her that she could be represented by an attorney. She went on to note that she did

² *Petition for Appeal* (August 2, 2004).

³ *Agency's Response to Employee's Petition for Appeal*, p. 2 (February 7, 2005).

⁴ *Order to Employee Regarding Untimely Filing of Appeal*, p. 1 (June 21, 2005).

⁵ Employee claims that because the form was completed and signed on the 30th, then that is the date it was filed.

⁶ It should be noted that no proof of the alleged July 30th filing was located anywhere in the record.

not receive Agency's Response to her Petition for Appeal from OEA.⁷

The AJ issued his Initial Decision on October 3, 2005. He held that according to the District of Columbia Court of Appeals, the time limit for filing an appeal with OEA is mandatory and jurisdictional in nature. Employee had the burden of proving jurisdiction including the timeliness of her filing. The AJ provided that Employee admitted to untimely filing her appeal but hoped that OEA would hear her case. He did not honor her request and dismissed her Petition for Appeal because she failed to meet the statutory filing deadline requirement.⁸

Employee filed a Petition for Review in response to the Initial Decision. She argued that the AJ failed to consider that postal irregularities occur or that her petition could have been placed in the wrong mailbox or thrown away. Therefore, he should have given her the benefit of the doubt. Employee also claimed that she did not receive her notice of removal until June 12th and not May 27th as the notice is dated.⁹

As to the timeliness of her Petition for Appeal, Employee provided that her appeal was dated June 12th and that she "posted it on the 13th" She claimed that she would submit a letter from an acquaintance who would corroborate that the letter was "posted on the 13th at [the] Suitland post office." Employee stated that this would prove that she filed her appeal before July 30th.¹⁰ She then went on to state that the AJ did not allow her

⁷ *Employee's Response to Order Regarding Untimely Filing of Appeal*, p. 1-2 (July 8, 2005).

⁸ *Initial Decision*, p. 4-5 (October 3, 2005).

⁹ *Petition for Review*, p. 3 (November 7, 2005).

¹⁰ *Id.* at 7. A letter is attached to Employee's Petition for Review from Rose Wade. Ms. Wade's letter outlines her discussions with Employee regarding her filing before the deadline. However, she does not offer any tangible proof that the filing actually occurred before July 30, 2004.

to make a statement showing good cause for the untimely filing.¹¹ Employee also noted that OEA Rule 605.1 was not explicitly followed by Agency.¹²

According to OEA Rule 629.2, Employee has the burden of proving issues of jurisdiction including the timeliness of her filing. As the AJ provided in his Initial Decision, the D.C. Official Code § 1-606.03 and OEA Rule 604.2 state that an appeal shall be filed within 30 days of the effective date of the appealed agency action. The AJ also noted in his Initial Decision that Agency may not benefit from the 30-day jurisdictional bar when it fails to give Employee adequate notice of its decision and the right to contest the decision through an appeal.¹³

This Board is moved by Employee's argument in her Petition for Review that she was not provided with copies of all of the documents outlined in OEA Rule 605.1. Rule 605.1 provides that:

when an agency issues a final decision to an employee on a matter appealable to the Office, the agency shall at the same time provide the employee with:

- (a) notice of the Employee's right to appeal to the Office;
- (b) a copy of the rules of the Office;
- (c) a copy of the appeal form of the Office;
- (d) notice of applicable rights to appeal under a negotiated review procedure; and
- (e) notice of the right to representation by a lawyer or other representative authorized by the rules.

In reviewing Employee's notice of separation from Agency, it appears that Agency failed to provide Employee with a copy of OEA Rules, the OEA appeal form,

¹¹ *Id.* at 8.

¹² *Id.* at 5. Employee admits that the notice of removal advised her of her right to appeal to OEA, however, it failed to include the other items outlined in OEA Rule 605.1.

¹³ *Initial Decision*, p. 5 (October 3, 2005) citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003) __ D.C. Reg. __ ().

and notice of the right to be represented by a lawyer or other representative. Agency's separation notice states that "a copy of the OEA Rules and the appeal form is available at your current work location. In addition, it is also available at www.k12.dc.us under the heading 'What's New, Events and Notes'." It goes on to note that if Employee is unable to access the information, then she could call (202) 442-5376 and a copy would be provided to her in a timely manner.

Agency did not provide these documents to Employee at the same time that she received her notice as the rule provides. Agency went to great length to inform Employee where she could find the rules and appeal form instead of following OEA Rules and providing her with actual copies. Because Agency outlined three different ways that Employee could retrieve the documents, it is reasonable to believe that it did not give Employee the documents with her separation notice.

Consequently, Agency cannot benefit from Employee's seemingly untimely filed Petition for Appeal because it failed to adhere to OEA Rule 605.1. Employee, arguably, spent most of her 30 days in which to appeal her matter to OEA, locating documents that Agency was required to give her with her notice of separation. Accordingly, we grant Employee's Petition for Review and remand this matter to the Administrative Judge to consider the case on its merits.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and this matter is **REMANDED** to the Administrative Judge to consider the case on its merits.

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.