

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: |) | |
| |) | |
| DOVE SETTLES, |) | |
| Employee |) | OEA Matter No. J-0042-17 |
| |) | |
| v. |) | Date of Issuance: July 12, 2017 |
| |) | |
| OFFICE OF THE STATE |) | |
| SUPERINTENDENT OF EDUCATION, |) | MONICA DOHNJI, Esq. |
| Agency |) | Senior Administrative Judge |
| |) | |

Dove Settles, Employee *Pro Se*
Hillary Hoffman-Peak, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 5, 2017, Dove Settles (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the Office of the State Superintendent of Education’s (“Agency”) decision to terminate her from her position as a Bus Driver, effective October 5, 2016. I was assigned this matter on June 5, 2017. Thereafter, Agency filed a Motion to Dismiss Employee’s Petition for Appeal for lack of jurisdiction.

Subsequently, on June 9, 2017, the undersigned Administrative Judge (“AJ”) issued an Order requiring Employee to address the jurisdiction issue in this matter no later than June 23, 2017. Agency was also afforded the option to submit a reply brief no later than July 7, 2017. While Employee submitted a timely brief, as of the date of this decision, Agency has not submitted the optional reply brief. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

JURISDICTION

As will be discussed below, the jurisdiction of this office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

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:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction

ANALYSIS AND CONCLUSIONS OF LAW

In its Motion to Dismiss, Agency highlights that OEA lacks jurisdiction in this matter because Employee’s appeal was filed with this Office more than thirty (30) days from the effective date of her termination. In her response to the June 9, 2017, Order on jurisdiction, Employee notes that “[t]he paper work stated that I had 30 days to respond to the paper work after termination. I Dove Settles misunderstood what the paper work was stated I thought I had [one] year to respond to the paper work that’s why I responded in a later month.”¹

This Office’s jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (“CMPA”), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to Title 6-B of the District of Columbia Municipal Regulation (“DCMR”) § 604.1², this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) Placement on enforced leave for 10 days or more.

¹ See Employee’s June 23, 2016 submission.

² See also, Chapter 6, §604.1 of the District Personnel Manual (“DPM”) and OEA Rules.

As previously noted, OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as “[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.” This Office has no authority to review issues beyond its jurisdiction.³ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁴

A “[d]istrict government employee shall initiate an appeal by filing a Petition for Appeal with the OEA. The Petition for Appeal must be filed within thirty (30) calendar days of the effective date of the action being appealed.”⁵ 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.⁶ Also, while this Office has held that the statutory thirty (30) day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature,⁷ there is an exception whereby, a late filing will 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.”⁸

Here, according to the parties’ submissions to this Office, Employee’s termination was effective on October 5, 2016. Therefore, Employee had thirty (30) days from October 5, 2016, to file an appeal with OEA, but she failed to do so. Employee stated that she filed late because she misunderstood the filing deadline in her termination notice.

A review of the October 5, 2016 Notice of Final Decision on Proposed Removal corroborates that Employee was notified of her appeal rights to this Office. Employee does not contest that she received a copy of the OEA appeal forms and OEA regulations, in compliance with OEA Rule 605. The Notice also informs Employee that she had thirty (30) days from the date of the Notice to file an appeal with this Office. Clearly, Employee was aware or should have been aware of OEA’s jurisdiction over this matter, as well as the rules governing appeals in this Office. Additionally, because Employee was aware of her appeal rights with this Office, as well as the mandatory thirty (30) day time limit for filing an appeal in this Office, I find that Employee’s Petition for Appeal is untimely. Employee was terminated effective October 5,

³ See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁴ 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).

⁵ DC Official Code §1-606.03.

⁶ See, e.g., *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, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

⁷ *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

⁸ OEA Rule 605.1, 59 DCR 2129 (March 16, 2012); See also *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); *Jones v. D.C. Public Schools, Department of Transportation*, OEA Matter No. 1601-0077-09, *Opinion and Order on Petition for Review* (May 23, 2011).

2016, and she did not file her appeal until May 5, 2017, approximately seven (7) months from the termination effective date. According to the October 5, 2016 Notice, Agency complied with OEA Rule 605.1 when it terminated Employee, and as such, Employee's untimely Petition for Appeal does not fall within the exception to the thirty (30) days mandatory filing requirement. Therefore, I conclude that this Office does not have jurisdiction over Employee's appeal. And for this reason, I am unable to address the factual 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:

MONICA DOHNJI, ESQ.
SENIOR ADMINISTRATIVE JUDGE