

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:)	
)	
ALFRED GURLEY,)	OEA Matter No. 1601-0008-05
Employee)	
)	Date of Issuance: April 14, 2008
)	
)	
DISTRICT OF COLUMBIA PUBLIC)	
SCHOOLS,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Mr. Gurley (“Employee”) worked as an Investigator with the District of Columbia Public Schools (“Agency”). On October 12, 2004, Employee received a notice of termination from Agency effective October 26, 2004. Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on November 24, 2004. On January 14, 2005, an OEA administrative assistant sent a notice to Agency informing it of Employee’s appeal. The notice requested that an answer to the petition be filed by February 15, 2005. The notice clearly provided that “failure to file an Answer by the stated deadline shall result in the matter being referred to an Administrative Judge who

may impose sanctions, including issuing a decision in favor of Employee.”¹

Agency failed to provide an answer to the petition and did not request an extension of time in which to file an answer. On March 21, 2005, the OEA Administrative Judge (“AJ”) issued his Initial Decision. He provided that because Agency failed to file an answer, Employee’s termination was reversed. Agency was ordered to reinstate Employee to his position of record or a comparable position with back pay and benefits.²

On April 26, 2005, Agency filed a Petition for Review. It argued that it submitted an Answer to Employee’s Petition for Appeal to the AJ and Employee’s representative. Agency claimed that the Answer was mailed on February 7, 2005, to the Employee’s representative. It also asserted that Employee’s representative received its response on February 14, 2005. Agency does not address OEA’s failure to receive said Answer. It finally provided that if it is concluded that OEA did not receive the Answer in a timely manner that the case still be considered.³

Employee filed a Response in Opposition to Agency’s Petition for Review on May 27, 2005. Employee argued that the Petition for Review was not filed in a timely manner according to OEA Rule 634.1. He asserted that the petition should have been filed within thirty-five calendar days of the issuance of the Initial Decision. However, it was filed thirty-six days after. Moreover, Employee provided that Agency violated OEA Rules 608.3-608.6 by failing to personally deliver or mailing the petition. It was

¹ *Letter from OEA Administrative Assistant to Agency*, p. 1 (January 14, 2005).

² *Initial Decision*, p. 2-3 (March 21, 2005).

³ *Petition for Review of Initial Decision*, p. 1-2 (April 26, 2005).

Employee's position that a faxed copy of the Petition for Review was not an acceptable form of submitting an Answer to OEA. However, Employee does not dispute that he received a copy of Agency's response but argues that this does not negate Agency's requirement to file an Answer with OEA.⁴

OEA Rule 608.2 provides that "the Office shall promptly send a copy of the petition for appeal to the agency, and the agency shall file an answer within thirty (30) calendar days of the service of the petition for appeal." In accordance with this rule, the Administrative Assistant for OEA mailed a letter with a copy of Employee's Petition for Appeal to Agency. The letter requested that Agency file its answer to the petition by February 15, 2005. This was 30 days from the date of the letter.⁵

Approximately sixty-five days after the letter was mailed to Agency, the AJ issued his Initial Decision on March 21, 2005. On April 26, 2005, Agency filed its Petition for Review by facsimile. This was the first Agency filing in this case. As Employee correctly provided in his Opposition to Agency's Petition for Review, OEA Rule 608.4 provides that "filing of a petition for appeal and petition for review must be made by personal delivery at the Office between 9:00 A.M and 4:30 P.M., Monday through Friday, or by mail addressed to the Office." Therefore, Agency's Petition for Review, which was sent by fax, was not properly filed in accordance with the OEA rules.

Moreover, D.C. Official Code § 1-606.03(c) and OEA Rule 633.1, state that an Initial Decision becomes final thirty-five (35) calendar days after issuance. Therefore, a

⁴ *Response of Alfred Gurley in Opposition to the Petition for Review of Initial Decision*, p. 1-3 (May 27, 2005).

⁵ *Letter from OEA Administrative Assistant to Agency*, p. 1 (January 14, 2005).

party wishing to file a Petition for Review must do so before the Initial Decision becomes final (OEA Rule 633.2). In the present matter, this would have been on April 25, 2005. Agency's petition was not filed until April 26, 2005. Therefore, Agency's Petition for Review was untimely. Furthermore, the District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency, such as OEA, is mandatory and jurisdictional in nature.⁶

As a result of Agency's failure to file an Answer to Employee's Petition for Appeal and its untimely filing of its Petition for Review, the OEA Board will not consider its Petition for Review. Accordingly, Agency's Petition for Review is **DENIED**.

⁶ *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) and *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

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.