

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:)	
)	
MICHAEL HAYES)	
Employee)	
)	OEA Matter No.: J-0140-06
v.)	
)	Date of Issuance: February 25, 2009
DISTRICT OF COLUMBIA PUBLIC)	
SCHOOLS)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Michael Hayes (“Employee”) was a Special Education teacher with the District of Columbia Public Schools (“Agency”). In a letter dated May 2, 2006 Agency informed Employee that if he did not submit by May 15, 2006 the appropriate documentation indicating his efforts to become certified, his employment would be terminated effective June 30, 2006. By letter dated June 21, 2006 Agency issued its final notice to Employee informing him that he would be separated from service effective June 30, 2006 as a result of not having completed the certification requirements. This letter also informed

Employee that he could appeal the removal to the Office of Employee Appeals (“Office”) and that he had 30 calendar days from June 30, 2006 to file the appeal.

The Office received Employee’s Petition for Appeal on August 16, 2006.¹ Employee’s appeal should have been filed by July 31, 2006. In an Initial Decision issued October 4, 2006 the Administrative Judge dismissed Employee’s appeal for lack of jurisdiction. The Administrative Judge reasoned that because Employee’s appeal had not been filed within the statutorily mandated 30-day filing period, his appeal was untimely and thus, the Office lacked jurisdiction to consider it.

Thereafter Employee timely filed a Petition for Review. In it he states that his “appeal was in fact postmarked and sent as certified mail by July 31, 2006. My package was received and signed for by either an OEA employee or D.C. Public Schools employee on August 1, 2006.”² With his petition Employee submitted a U.S. Postal Service tracking document. The document indicates that a package was picked up from Joppa, Maryland on July 31, 2006 and delivered to the D.C. Public Schools, Washington, D.C. on August 1, 2006. The document further indicates that the package was received by “J. Curenton.”

It is clear from the tracking document which Employee included with his petition that *this Office* did not receive Employee’s Petition for Appeal on August 1, 2006.³ The tracking document shows that the package was delivered to Agency, not to this Office, and received by someone at that location. Agency’s June 21, 2006 letter to Employee stated that Employee was to file an appeal at this Office. Moreover, the letter listed this

¹ Employee’s petition was date stamped by the Office as having been received on August 16, 2006.

² *Petition for Review* at 1.

³ Even if Employee had filed the appeal with this Office on August 1, 2006 as he claims, it still would have been untimely.

Office's address. This Office did not receive Employee's appeal until August 16, 2006 which was two weeks past the filing deadline.

The balance of Employee's Petition for Review pertains to his efforts to become certified and includes his arguments regarding the "unfair and unreasonable hardship" that is imposed upon an employee for having to file an appeal "within thirty calendar days, instead of business days."⁴ Because Employee has not cleared the jurisdictional hurdle, we cannot consider any of these arguments. For these reasons, we are compelled to deny Employee's Petition for Review.

⁴ *Petition for Review* at 3.

ORDER

Accordingly, it is hereby **ORDERED** that Employee'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.