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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MELVIN TAYLOR,)	
Employee)	OEA Matter No. J-0156-11
)	
v.)	Date of Issuance: October 4, 2011
)	
DEPARTMENT OF PUBLIC WORKS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Melvin Taylor, Employee, <i>pro se</i>		
Andrea Comentale, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 3, 2011, Melvin Taylor (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the Department of Public Works’ (“Agency”) decision to terminate him. At the time of his termination, Employee was a Parking Officer. Employee was terminated for being absent without official leave (“AWOL”). The effective date of Employee’s termination was June 17, 2011. Agency was notified on August 5, 2011, of Employee’s petition for appeal and on September 6, 2011, Agency filed an answer to the appeal requesting that Employee’s appeal be dismissed for lack of jurisdiction. This matter was assigned to me on or about September 21, 2011. Because this matter could be decided on the basis of the above documents of record, no proceedings were conducted. The record is closed.

JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

There is a question as to whether OEA has jurisdiction over this appeal. Employee has the burden of proof on issues of jurisdiction.¹ And Employee must meet this burden by a “preponderance of the evidence” which is defined as “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.”² When an agency issues its final agency decision to an employee on a matter appealable to this Office, the “district government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within 30 calendar days of the effective date of the action being appealed.”³ 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.⁴ While this Office has also held that the statutory 30 days time limit for filing an appeal in this Office is mandatory and jurisdictional in nature,⁵ 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.”⁶

Here, Employee’s termination was effective June 17, 2011. He had 30 days from this date to file an appeal with OEA, which he didn’t. He filed his appeal on August 3, 2011, forty-seven (47) days from the termination effective date. Because Agency complied with OEA Rule 605.1 when it terminated Employee, Employee’s appeal is untimely and does not fall within the exception to the mandatory 30 days limit for filing an appeal with OEA. 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 this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

¹ OEA Rule 629.2, 46 D.C. Reg. 9317 (1999).

² OEA Rule 629.1

³ DC Official Code 1-606.03

⁴ See, e.g., *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).

⁵ *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999) __ D.C. Reg. __ ().

⁶ OEA Rule 605.1; 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) __ D.C. Reg. __ (); *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).