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:)
)
CHARLOTTE CLIPPER,) OEA Matter No. 1601-0125-11
Employee)
) Date of Issuance: February 5, 2013
)
D.C. NATIONAL GUARD,)
Agency)
)

OPINION AND ORDER
ON
PETITION FOR REVIEW

Charlotte Clipper ("Employee") worked as a Supervisory Human Resources Specialist with the D.C. National Guard ("Agency"). On May 17, 2011, Employee received a notice of final decision from Agency providing that she would be removed from her position because of malfeasance,[1] insubordination,[2] and neglect of duty.[3] On June 28, 2011, Employee filed a

[1] Employee was charged with misrepresenting Agency as a sponsor on her former supervisor's application to extend his VISA with the U.S. Department of Immigration and Nationalization and the U.S. Department of Labor. It was Agency's position that it did not sponsor her former supervisor and did not assign, direct, or instruct her to serve in that capacity. Employee was also accused of providing false information on her former supervisor's application to the United Nations International Civilian Police. Furthermore, Agency alleged that she allocated $20,000 in salary increases for herself over a period of three years. Accordingly, she was charged with malfeasance for violating District Personnel Regulation ("DPR") §1619.9 by threatening the integrity and security of Agency and D.C. government operations. *Agency's Answer to Employee's Petition for Appeal,* Tab B2 (August 24, 2011).
[2] Agency claimed that Employee failed to provide status reports requested by her supervisor. According to Agency, her responses were evasive, repetitive, and non-responsive. Thus, Employee was charged with insubordination in accordance with DPR §1619.6. *Id.*
[3] Finally, Employee was charged with neglect of duty for failing to properly categorize leave requests for other employees, which resulted in a break of service to the detriment of those employees. Agency also claimed that Employee incorrectly posted time and attendance for shift differential pay during the 2009 Presidential Inauguration, resulting in a loss of pay to employees. Moreover, Agency accused Employee of exposing District government

Petition for Appeal with the Office of Employee Appeals ("OEA"). She argued that she was not aware that completing the forms pertaining to her former supervisor was a violation of any rules because he was employed by Agency for several years. Further, she provided that the claims regarding the $20,000 in salary increases were false. She explained that no personnel changes could have occurred without the knowledge and approval from the Interim Director. As for the insubordination and neglect of duty charges, Employee similarly provided that those accusations were unfounded and without merit.[4]

Agency filed its Answer to Employee's Petition for Appeal on August 24, 2011. It made many of the same arguments provided in its notice to remove Employee. Agency reasoned that because Employee was properly removed, OEA should dispose of the case on its merits.[5]

After reviewing the record, the OEA Administrative Judge ("AJ") issued an order to Employee requesting that she submit a written statement regarding OEA's jurisdiction. The AJ explained in the order that OEA may not have jurisdiction over her appeal because it was untimely filed. Employee had until September 12, 2011, to comply with the AJ's order.[6]

On September 16, 2011, the AJ issued her Initial Decision in this matter. She explained that Employee did not submit the jurisdictional brief, as ordered. Consequently, she held that Employee filed her appeal more than thirty days after her effective date of her termination. Because the time limit for filings is mandatory, the AJ dismissed the case for lack of jurisdiction.[7]

Employee filed a Petition for Review of the Initial Decision on October 14, 2011. She

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employees' personal information to unauthorized federal government employees. According to Agency, all three instances violated DPR §1619.6. *Id.*

[4] *Petition for Appeal,* Attachment, p. 1-4 (June 28, 2011).

[5] *Agency's Answer to Employee's Petition for Appeal,* p. 1-4 (August 24, 2011).

[6] *Order Requiring Employee to Submit Written Statement Regarding OEA's Jurisdiction* (September 2, 2011).

[7] *Initial Decision* (September 16, 2011).

asserts that she mailed her appeal to OEA on June 11, 2011, via certified mail.[8] Having not received the return receipt, Employee later learned that OEA moved to a new location and was provided with the new address. She re-submitted her appeal and provided a letter outlining what occurred, along with the tracking receipt for the original filing.[9] Employee further argues that she responded to the AJ's jurisdiction order on September 7, 2011. She provided proof that her response was delivered on September 8, 2011. However, the document was not retrieved by OEA.[10]

This office concedes that when it relocated, it experienced some challenges receiving its mail. OEA Rule 608.4 provides that the "filing of a petition for appeal . . . must be made by personal delivery at the Office . . . or by mail addressed to the Office." Employee has provided adequate proof that her appeal was mailed and should have been received by OEA within a timely manner. She also provided proof that she responded to the AJ's jurisdictional order in a timely manner. The Superior Court for the District of Columbia in *Nursat Aygen v. D.C. Office of Employee Appeals,* 2009 CA 006528 P(MPA) and 2009 CA 008063 P(MPA) (D.C. Super. Ct. April 5, 2012) held that a document mailed by certified or registered mail, return receipt requested, is adequate evidence to prove that the document was indeed mailed.

But for OEA's mailing issues surrounding its relocation, Employee's Petition for Appeal and response to the AJ's jurisdiction order would have been timely submitted. Accordingly, we must vacate the Administrative Judge's decision and remand the matter for her to consider the case on its merits. Hence, Employee's Petition for Review is GRANTED.

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[8] According to Employee, the receipt provided an expected delivery date of June 13, 2011.
[9] *Petition for Review,* p. 1-2 (October 14, 2011).
[10] *Id.*

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED**.

FOR THE BOARD:

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William Persina, Chair

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Vera M. Abbott

____
Sheree L. Price

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.