

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:)	
)	
PATRICIA VOLCY,)	
Employee)	OEA Matter No. 1601-0111-14
)	
v.)	
)	Date of Issuance: September 13, 2016
OFFICE OF STATE SUPERINTENDENT)	
OF EDUCATION,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Patricia Volcy (“Employee”) worked as a Bus Attendant with the Office of State Superintendent of Education (“Agency”). Agency terminated Employee from her position for physically assaulting a student. Her termination was effective on January 2, 2008.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 15, 2014. She explained that there was a student who refused to sit in their seat after she requested that they do so. Employee claimed that as she turned, the student slapped her. She requested that she be reinstated to her position.²

On September 17, 2014, Agency filed its Response to Employee’s Petition for Appeal. It argued that Employee’s appeal should be dismissed because it was untimely filed. According to

¹ *Petition for Appeal*, p. 10 (August 15, 2014).

² *Id.* at 2.

Agency, Employee had thirty days from the effective date of her termination to file her appeal. Therefore, her appeal should have been filed in February of 2008. However, Employee did not file her appeal until August 15, 2014. Thus, Agency contended that OEA lacked jurisdiction to consider the merits of Employee's case.³

The OEA Administrative Judge ("AJ") issued her Initial Decision on February 24, 2015. She provided that prior to the current appeal, Employee filed an appeal with OEA on April 2, 2008. However, she withdrew her appeal on April 17, 2008, and elected to appeal her claim through her union. Thereafter, an Initial Decision was issued dismissing the appeal, as Employee requested.⁴

The AJ held that after a review of the prior appeal, it was clear that Employee withdrew her appeal. Furthermore, she does not dispute this claim. Thus, she ruled that Employee was attempting to have "a second bite at the appeal" by filing the current matter. The AJ explained that Employee cannot re-litigate this matter because she was not previously successful in her appeal before the union. Moreover, she found that because Employee chose to appeal her termination through her union, she could not then appeal to OEA. As a result, the AJ dismissed Employee's case.⁵

Employee filed a Petition for Review with the OEA Board on March 30, 2015. She admits that she filed a withdrawal of her appeal with OEA so that she could appeal to her union. However, she refiled an appeal with OEA because she did not hear anything from her union from May of 2008 through August 15, 2014. Employee requests that this Board grant her petition because despite numerous attempts to reach the union, she has been unsuccessful. She claims

³ *The Office of the State Superintendent of Education's Motion to Dismiss Patricia Volcy's Petition for Appeal for Lack of Jurisdiction*, p. 2-3 (September 17, 2014).

⁴ *Initial Decision*, p. 3 (February 24, 2015).

⁵ *Id.*, 3-4.

that but for the union's statement that it would handle her appeal, she would have allowed her first appeal with OEA to continue. Therefore, she requests that she be given the opportunity to challenge the termination action against her.⁶

OEA Rule 632.1 provides that "the initial decision shall become final thirty-five (35) calendar days after issuance." Moreover, OEA Rule 632.5 states that "administrative remedies shall be considered exhausted when a decision becomes final in accordance with this section." Employee's 2008 appeal became final thirty-five days after the May 29, 2008 Initial Decision was issued. In accordance with OEA Rule 632.5, all administrative remedies are exhausted after the decision became final. Thus, because a final decision has been issued on Employee's 2008 appeal involving her withdrawal, this Board can only address the issues raised in the current 2014 appeal.

D.C. Official Code § 1-606.03(a) provides the following:

An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. *Any appeal shall be filed within 30 days of the effective date of the appealed agency action* (emphasis added).

Similarly, OEA Rule 604.2 provides that "an appeal filed pursuant to § 604.1 must be filed within thirty (30) calendar days of the effective date of the appealed agency action." The effective date of Employee's termination action was January 2, 2008. Therefore, in accordance with the D.C. Official Code and OEA Rule 604.2, Employee had until February 6, 2008, to file her appeal with OEA. She did not file her current Petition for Appeal until August 15, 2014.

⁶ *Employee's Petition for Review*, p. 2-3 (March 30, 2015).

This is more than six years past the deadline.

The D.C. Court of Appeals held in *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991), that “the time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters.”⁷ As a result, OEA has consistently held that the time limit for filing Petitions for Appeals is mandatory in nature.⁸ Thus, OEA lacks the authority to extend the filing deadlines. Consequently, Employee’s Petition for Review is dismissed.

⁷ See also *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) (citing *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 635 (D.C.1985); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C.1985); *Gosch v. District of Columbia Department of Employment Services*, 484 A.2d 956, 958 (D.C.1984); and *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C.1980)).

⁸ *Chanti Middleton v. Office of State Superintendent of Education*, OEA Matter No. J-0118-14 (November 4, 2014); *Michael Gamboa v. Department of Youth Rehabilitation Services*, OEA Matter No. J-0082-14 (November 10, 2014); *Charmaine Hicks v. Office of State Superintendent of Education*, OEA Matter No. J-0008-15 (May 12, 2015); *Derek Gasden v. Department of General Services*, OEA Matter No. J-0065-14, *Opinion and Order on Petition for Review* (February 16, 2016); *Tenecia Mosley v. D.C. Public Schools*, OEA Matter No. J-0014-16 (February 24, 2016); and *Geraldine Tally Hobby v. D.C. Public Schools*, OEA Matter No. J-0100-14, *Opinion and Order on Petition for Review* (March 29, 2016).

ORDER

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

FOR THE BOARD:

Sheree L. Price, Interim Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.