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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
SALIFOU KEITA)	OEA Matter No. J-0030-12
Employee)	
)	Date of Issuance: March 2, 2012
v.)	
)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Administrative Judge
Agency)	
)	

Salifou Keita, Employee, *pro se*
Bobbie Hoye, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Salifou Keita, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on November 15, 2011, appealing the final decision of the District of Columbia Public Schools, Agency herein, to remove him from his teaching position, effective August 12, 2011.

The matter was assigned to me on December 19, 2011. Agency submitted its Answer on December 16, 2011, raising several challenges, including the argument that the petition was not filed in a timely manner. Following a review of the file, I issued an Order advising Employee that his petition appeared to have been untimely filed. I directed that he submit legal and/or factual arguments supporting his position that this Office has jurisdiction to hear his appeal. He was directed to file his response by February 7, 2012. Employee filed a timely response. The record closed on that date.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 604.2 provides that “an appeal filed pursuant to Rule 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action.” Employee’s petition had to be filed within 30 days of August 12, 2011, the effective date of the removal. However, it was not filed until November 15, 2011, almost 90 days after the effective date. Both this Office and the D.C. Court of Appeals have consistently held that time limits for filing appeals are mandatory in nature. *See, e.g., Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), ___ D.C. Reg. ___ (), citing *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); and *Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010), ___ D.C. Reg. ____ ().

The only exception to the mandatory nature of the timeliness rule that this Office has established is that a late filing may be excused if an agency fails to provide an employee with “adequate notice of its decision and the right to contest the decision through an appeal”. *McLeod v. District of Columbia Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003), _____ D.C. Reg. _____ (). D.C. Official Code § 1-606.04(e) states, in pertinent part, that “the personnel authority shall provide the employee with a written decision following the review . . . and shall advise each employee of his or her right to appeal to the Office as provided in this subchapter.” OEA Rule 605.1 states the specific information regarding appeal rights to OEA that an agency must include in its final decision:

[W]hen an agency issues a final decision to an employee on a matter appealable to the Office, the agency shall at the same time provide the employee with:

- (a) notice of the employee’s right to appeal to the Office;
- (b) a copy of the rules of the Office;
- (c) a copy of the appeal form of the Office;
- (d) notice of applicable rights to appeal under a negotiated review procedure; and
- (e) notice of the right to representation by a lawyer or other representative authorized by the rules.

In its final notice, issued on July 15, 2011, Agency informed Employee of his right to appeal its action to OEA within 30 calendar days of the effective date of his termination. It provided him with a copy of OEA Rules and the appeal information as well as OEA’s website. Thus Agency appears to have complied with OEA Rule 605.1, and Employee does not challenge its compliance. The notice was sent to Employee at the address listed by Employee in his petition as his home address. It was not returned, and was attached to the petition filed by Employee, so it is presumed to have been received by him in a timely manner. In addition, Agency’s December

16 submission included a certificate of service stating it had been sent to Employee at the address listed in his petition on that same day, and is also presumed to have been received. Employee's submission in response to the January 17 Order was filed in a timely manner. However, it did not address the issue of the timeliness of the filing of his petition.

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) places the burden of proof on all issues of jurisdiction on Employee. Timeliness is a jurisdictional issue. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, 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". I conclude that Employee failed to meet his burden of proof on the issue of jurisdiction since he did not meet his burden of establishing that the petition was filed in a timely manner. I therefore further conclude that this petition for appeal should be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge