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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: J-0084-14
JOHNNY LEE GUY,	)	
Employee	)	
	)	Date of Issuance: August 25, 2014
v.	)	
	)	
DEPARTMENT OF YOUTH REHABILITATION	)	
SERVICES,	)	
Agency	)	
_____	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge
Johnnie Louis Johnson, III, Esq., Employee Representative	)	
Dionne Hayes, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

Johnnie Guy (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on June 10, 2014, challenging his separation from service, pursuant to a Reduction-in-Force (“RIF”) conducted by the Department of Youth and Rehabilitation Services’ (“Agency”). I was assigned this matter on June 13, 2014. After being granted an extension of time to respond, Agency filed its Answer to the Petition for Appeal on July 25, 2014. An Order on Jurisdiction was issued on August 4, 2014, which required Employee to provide a statement of the reason(s) why he believes this Office may exercise jurisdiction over his appeal. Employee filed his response on April 18, 2014. The record is now closed.

**ISSUE**

Whether OEA may exercise jurisdiction over Employee’s appeal.

## JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether this Office has jurisdiction over Employee's appeal. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

*An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . Any appeal shall be filed within 30 days of the effective date of the appealed agency action.*

OEA Rule 604.2 also provides that an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed agency decision.<sup>1</sup> Here, Employee was issued a RIF notice on September 6, 2013. The RIF notice stated that Employee would be separate from District government service effective October 11, 2013. This notice also advised Employee that he had thirty (30) calendar days from the effective date of the RIF to file an appeal with this Office. Employee filed his Petition for Appeal with this Office on June 10, 2014.

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he *employee* shall have the burden of proof as to issues of jurisdiction..." The burden of proof is defined under a preponderance of the evidence standard. Preponderance of the evidence means "[t]hat 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."<sup>2</sup>

On August 4, 2014, Employee was ordered to set forth his reasons as to why this Office may exercise jurisdiction over his appeal. Employee filed his response on August 18, 2014. In Employee's brief, he argues that he "is not challenging the reduction-in-force itself, but the failure and refusal of the [Agency] to provide priority placement to [him] as it promised to do in the reduction-in-force letter."<sup>3</sup> Employee seems to argue the merits of the case and states that Agency's refusal to provide at least one round of competition action was a "breach of agreement and promise" to comply with the Agency's Reemployment Priority Program. Employee also asserts that "[t]here are no time limits set for[th] in the [Agency's] letter or any jurisdictional time limits for the Office of Employee Appeals to review the [Agency's] compliance with its priority placement obligation." Employee argues that Agency has not made a final decision on the priority placement of Employee, thus, his time limit to file with this Office has not expired. I disagree. As an alternate argument, Employee asserts that this matter could be held in abeyance pending the receipt of a final Agency decision regarding his priority placement.

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<sup>1</sup> 59 DCR 2129 (March 16, 2012).

<sup>2</sup> OEA Rule 628.1, 59 DCR 2129 (March 16, 2012).

<sup>3</sup> Employee's Brief, p. 4 (August 18, 2014).

The RIF notification letter, dated September 6, 2013, clearly provides that Employee was entitled to appeal the RIF within thirty (30) days to OEA. Employee filed his appeal on June 10, 2014, beyond the thirty (30) day limit prescribed in D.C. Code § 1-606.03. Despite Employee's contention that he is not challenging the RIF itself, but rather the Priority Reemployment Program, this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity.<sup>4</sup> Priority reemployment issues constitute post-RIF activities and are generally considered grievances that fall outside of OEA's scope of review.<sup>5</sup>

This Office has no authority to review issues beyond its jurisdiction. The time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional matters.<sup>6</sup> A failure to file a notice of appeal within the required time period divests this Office of jurisdiction to consider the appeal.<sup>7</sup> Although Employee asserts that he is not challenging the RIF itself, but the priority reemployment procedures, this is considered post-RIF activity, and is not within the purview of OEA's jurisdiction. Employee's failure to timely file his appeal, as set forth in OEA Rule 604.2 and D.C. Code § 1-606.03, and his challenge to the priority reemployment procedures, do not satisfy Employee's burden as to jurisdiction. Accordingly, this matter must be dismissed.

### **ORDER**

Based on the aforementioned, it is **ORDERED** that Employee's Petition for Appeal is hereby **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge

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<sup>4</sup> See *Pinkney v. D.C. Dep't of Health*, OEA Matter No. 2401-0014-11 (April 26, 2013); See *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005).

<sup>5</sup> See *Id.*

<sup>6</sup> See *Zollicoffer v. District of Columbia Pub. Sch.*, 735 A.2d 944 (D.C. 1999) (quoting *District of Columbia Pub. Emp. Relations Bd. v. District of Columbia Metro. Police Dep't*, 593 A.2d 641, 643 (D.C. 1991)).

<sup>7</sup> See *Id.* at 946.