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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

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|--|---|------------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| LITTYCE BOONE, |) | OEA Matter No.: J-0293-10 |
| Employee |) | |
| |) | |
| v. |) | Date of Issuance: January 10, 2011 |
| |) | |
| D.C. PUBLIC SCHOOLS, |) | |
| Agency |) | Sommer J. Murphy, Esq. |
| _____ |) | Administrative Judge |
| Dalton Howard, Esq., Employee Representative | | |
| Bobbie L. Hoye, Esq., Agency Representative | | |

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 14, 2010, Littyce Boone (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Public School’s (“Agency”) decision to terminate her. Agency’s notice informed Employee that she was being separated from service because she received unsatisfactory ratings under her Professional Performance Evaluation Process (“PPEP”). Employee’s termination was effective on August 15, 2009.

This matter was assigned to me on or around August 10, 2010. I issued an Order on September 10, 2010, directing Employee to present legal and factual arguments to support her argument that this Office has jurisdiction over her appeal. Employee was advised that she had the burden of proof with regard to the issue of jurisdiction. Employee was also notified that the appeal would be dismissed if she failed to respond to the Order by September 20, 2010. Employee submitted a response to the Order on September 21, 2010. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

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

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

According to a letter from Agency to Employee dated June 15, 2009 (“Termination Letter”), she was informed that the effective date for her separation from service was August 15, 2009. The termination letter stated in pertinent part:

You may elect to file an appeal to this termination in one of the following ways, **not both:**

1. You may elect to file an appeal with the D.C. Office of Employee Appeals....That appeal must be filed within thirty (30) calendar days of the effective date of your termination...**or**”
2. You may elect to file a grievance pursuant to Article VI of the Collective Bargaining Agreement by and between the District of Columbia Board of Education and the Washington Teacher’s Union...

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” OEA Rule 629.1, states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean: “[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.”

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the Comprehensive Merit Personnel Act (“CMPA”) pertaining to this Office. Amended D.C. Code §1-606.3(a) states: “Any appeal [to this Office] shall be filed within 30 days of the effective date of the appealed agency action.”

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.¹ In *McLeod v. D.C. Public Schools*, this Office held that the only situation in which an agency may not “benefit from the [30-day] jurisdictional bar” is when the agency fails to give the employee “adequate notice of its decision and the right to contest the decision through an appeal.”²

Employee, through counsel, argues that she filed her appeal with this Office only after the Washington Teachers Union “(Union)” filed a class grievance on behalf of Employee and other similarly situated teachers. Employee further asserts that she did not receive notice regarding the ramifications of her appeal rights if she chose not to accept the terms of Agency’s Notice of Settlement. Employee therefore argues that she should be allowed to file an appeal with this Office.³

As previously mentioned, Employee was removed from service with an effective date of August 15, 2009. However, she did not file her petition for appeal until April 14, 2010, approximately eight months after the effective date of her termination. This is well past the 30 day filing deadline as discussed *supra*. Employee was given proper notice regarding her options to file an appeal in response to her termination. The options discussed in the termination letter required employee to make an election of remedies. Employee made the decision to allow her Union to file a class grievance on her behalf. Because she failed to file her petition for appeal within the 30 day deadline, I find that Employee is precluded from pursuing this appeal before this forum.

Employee has therefore failed to meet her burden of proof regarding jurisdiction. Based on the foregoing reasons, this matter must be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Sommer J. Murphy, Esq.
Administrative Judge

¹ 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); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); *White v. D.C. Fire Department*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (September 2, 1994), ___ D.C. Reg. ___ ().

² OEA Matter No. J-0024-00 (May 5, 2003), ___ D.C. Reg. ___ ().

³ See Employee’s Brief at 2 (September 21, 2010).