

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:)	
)	
BARBARA HALL,)	OEA Matter No. 1601-0243-12
Employee)	
)	Date of Issuance: January 5, 2016
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Barbara Hall (“Employee”) worked as a Social Worker with the D.C. Public Schools (“Agency”). At the close of the 2010-2011 school year, Employee was classified as an excessed employee with an effective rating under IMPACT, Agency’s performance assessment system. As a result, she was informed that she had to secure placement for the 2011-2012 school year. Employee did not secure employment, and she was, therefore, given the choice to accept a buyout, take an early retirement, or take an additional year to secure a new placement. Employee chose to take an additional year to secure a new placement for the 2012-2013 school year. In accordance with the Washington Teacher’s Union (“WTU”) agreement, Agency had the right to separate any excessed teachers who were unable to secure a new placement.¹ Thus, on July 26, 2012, Agency issued a notice to Employee informing her that effective August 10, 2012,

¹ *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal*, p. 1-2 (October 11, 2012).

she would be terminated due to her failure to secure a new position.²

Employee challenged the termination by filing a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 10, 2012. In it, she argued that she was on medical leave for the majority of the 2011-2012 school year. Hence, Agency did not give her any time to complete her job search. She also provided that she was denied interviews because many principals had budgetary concerns. Lastly, Employee asserted that she participated in hiring fairs, but there were no vacancies available. Therefore, she believed that her position should not have been abolished.³

In its Answer to the Petition for Appeal, Agency asserted that Employee was terminated because she failed to secure another position within the required timeframe pursuant to the WTU agreement. It explained that Employee “. . . had a duty to obtain a position by mutual consent by June 20, 2012, in accordance with Article 4.5.5.3.3.5 of the Collective Bargaining Agreement (“CBA”).”⁴ Moreover, Agency provided that Employee was granted interviews with at least six principals. In response to Employee’s assertion that she was on medical leave for the majority of the school year, Agency provided that she was on medical leave for twenty-five days of the 2012-2013 school year.⁵ Therefore, it believed that its action was proper.⁶

The OEA Administrative Judge (“AJ”) subsequently scheduled a Status Conference for January 29, 2014.⁷ Agency’s representative was present for the Status Conference, but Employee did not appear. As a result, the AJ issued an Order for Statement of Good Cause to Employee.⁸ Employee subsequently submitted an email notifying OEA of her new home

² *Petition for Appeal*, p. 9 (September 10, 2012).

³ *Id.*, 3-5.

⁴ *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal*, p. 3 (October 11, 2012).

⁵ According to Agency, Employee was on medical leave from January 3, 2012 to February 7, 2012.

⁶ *Id.*

⁷ *Order Convening a Status Conference* (December 31, 2014).

⁸ *Order for Statement of Good Cause* (January 29, 2014).

address.⁹

Thereafter, the AJ issued an Order Rescheduling the Status Conference based on Employee's assertion that the previous orders went to her former address.¹⁰ On the date of the rescheduled Status Conference, both parties failed to appear. Consequently, the AJ issued another Order for Statement for Good Cause on February 25, 2014.¹¹ On March 5, 2014, Employee submitted a letter to the AJ which provided that due to a medical emergency, she was not able to attend the rescheduled Status Conference. Therefore, Employee requested that the Status Conference be rescheduled again.¹² In addition to its failure to attend the rescheduled Status Conference, Agency also failed to respond to the AJ's Good Cause order.

The Initial Decision was issued on March 18, 2014. The AJ found that Agency failed to defend its termination action. She held that Agency failed to appear at the February 24, 2014 Status Conference and failed to respond to her February 25, 2014 Order. Thus, the AJ ruled that Agency violated OEA Rule 621. Accordingly, Agency's termination action was reversed, and it was ordered to reinstate Employee with back pay and benefits.¹³

On April 23, 2014, Agency filed a Petition for Review with the OEA Board. It argues that it did not fail to defend its action. Agency's representative admits that she did not place the February 24, 2014 Status Conference on her calendar and provides that she “. . . takes full responsibility for that mistake.”¹⁴ However, Agency's representative claims that she was unaware of the AJ's February 25, 2014 order. Agency argues that Employee actually failed to prosecute her action by not attending two status conferences and failing to submit Statements of

⁹ *Email to OEA* (February 7, 2014).

¹⁰ *Order Rescheduling Status Conference* (February 10, 2014).

¹¹ *Order for Statement of Good Cause* (February 25, 2014).

¹² *Employee's Statement of Good Cause* (March 5, 2014).

¹³ *Initial Decision*, p. 3 (March 18, 2014).

¹⁴ *District of Columbia Public Schools' Petition for Review*, p. 2 (April 23, 2014).

Good Cause. Therefore, Agency requests that the Board grant its Petition for Review, overturn the Initial Decision, and remand the matter so that the case can be decided on the merits.¹⁵

In response to the Petition for Review, Employee argues that the AJ's decision was proper. She asserts that Agency failed to submit new and material evidence prior to the case being closed. Therefore, she requests that she be reinstated with back pay and benefits.¹⁶

In accordance with OEA Rule 633.1 "any party to the proceeding may serve and file a petition for review of an initial decision with the Board within thirty-five (35) calendar days of issuance of the initial decision." Furthermore, D.C. Official Code § 1-606.03(c) provides that ". . . the initial decision . . . shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period." 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."¹⁷ Therefore, OEA has consistently held that the filing requirement for Petitions for Review is mandatory in nature.¹⁸

In the current case, the Initial Decision was issued on March 18, 2014. Agency did not file its Petition for Review until April 23, 2014. This is past the thirty-five day deadline.

¹⁵ *Id.* at 4.

¹⁶ *Response to Petition for Review* (June 13, 2014).

¹⁷ Also see *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)).

¹⁸ *Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), *James Davis v. Department of Human Services*, OEA Matter No. 1601-0091-02, *Opinion and Order on Petition for Review* (October 18, 2006); *Damond Smith v. Office of the Chief Financial Officer*, OEA Matter No. J-0063-09, *Opinion and Order on Petition for Review* (December 6, 2010); *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); and *Ronald Holman v. D.C. Public Schools*, OEA Matter No. 1601-0100-12, *Opinion and Order on Petition for Review* (March 3, 2015).

Because the statute is mandatory, this Board does not have the authority to waive the requirement.¹⁹ Accordingly, Agency's Petition for Review is DISMISSED.

¹⁹ *Assuming arguendo* that this Board could consider the merits of Agency's arguments, the petition would be denied because there is substantial evidence to support that it failed to comply with the AJ's order to attend a scheduled conference and failed to respond to a Good Cause Order. On February 10, 2014, the AJ issued an Order Rescheduling Status Conference. In that order, she provided that "the AJ may impose sanctions, including dismissing the appeal or rule in favor of the appellant, if a party does not attend." *Order Rescheduling Status Conference* (February 10, 2014). Moreover, as the AJ accurately held, OEA Rule 621.3, provides the sanctions that she may take when a party fails to prosecute or defend a matter. The rule provides that:

- if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or *rule for the appellant* (Emphasis added). Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:
- (a) appear at a scheduled proceeding after receiving notice;
 - (b) submit required documents after being provided with a deadline for such submission; or
 - (c) inform the Office of a change of address which results in correspondence being returned.

Based on the aforementioned, it was within the AJ's discretion to rule in favor of Employee and overturn Agency's decision. Agency failed to comply with OEA Rule 621.3(a) when it failed to appear at the February 24, 2014 Status Conference. Additionally, Agency's representative failed to adhere to OEA Rule 621.3(b) when she failed to provide a Good Cause statement for her absence at the February 24, 2014 Status Conference. The AJ issued an Order Requesting Good Cause Statements on February 25, 2014. The parties' responses were due on March 7, 2014. Agency did not submit the required document of good cause.

OEA has consistently held that a matter may be decided in favor of an employee when Agency fails to defend its action against an employee by not submitting documents or by not attending a proceeding. *Marlon Ray v. D.C. Public Schools, Division of Transportation*, OEA Matter No. J-0070-04, *Opinion and Order on Petition for Review* (May 15, 2007); *Sharon Young-Wester v. D.C. Public Schools*, OEA Matter No. J-0033-03, *Opinion and Order on Petition for Review* (September 19, 2006); *Francine H. James v. Office of Boards and Commissions (Board of Appeals and Review)*, OEA Matter No. 2401-0069-04, *Opinion and Order on Petition for Review* (July 31, 2007); and *Isabelita Aglipay v. Department of Mental Health*, OEA Matter No. 1601-0072-08, *Opinion and Order on Petition for Review* (July 30, 2010). Therefore, even if Agency's petition was timely filed, this Board would have upheld the AJ's decision that Agency failed to defend its action against Employee.

ORDER

It is hereby **ORDERED** that Agency's Petition for Review is **DISMISSED**.

FOR THE BOARD:

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

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.