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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: J-0127-14
DELWIN HAWKINS,)	
Employee)	
)	Date of Issuance: October 22, 2014
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 10, 2014, Delwin Hawkins filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Schools’ (“DCPS” or “Agency”) action of final decision to remove him from his position as a Family Care Coordinator. Employee was removed because he received an “Ineffective” rating under Agency’s IMPACT program, an assessment system for school-based personnel.¹ His termination was effective on August 8, 2014.

I was assigned this matter in September of 2014. On September 30, 2014, I issued an Order directing Employee to submit a written brief addressing whether this appeal should be dismissed for lack of jurisdiction. Employee was required to submit a response on or before October 14, 2014. Employee did not submit a response. The record is now closed.

JURISDICTION

As will be explained below, jurisdiction in this matter has not been established.

¹ IMPACT is the effectiveness assessment system which the D.C. Public Schools used for the 2009-2010 school year to rate the performance of school-based personnel.

ISSUE

Whether OEA has jurisdiction over Employee's appeal.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.3(a) states:

“An employee may appeal 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....”

Thus, §101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only: a performance rating that results in removal; a final agency decision affecting an adverse action for cause that results in removal, a reduction in grade, a suspension of 10 days or more, or a reduction-in-force.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) provides 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 “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.” OEA Rule 628.2 further states that the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.²

Pursuant to OEA Rule 604.2, an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed action. Employee was terminated effective August 8, 2014, but did not file a Petition for Appeal with this Office until September 10, 2014, more than thirty days after the effective date of his termination. Moreover, Agency's Notice of Ineffective IMPACT Rating and Termination states that Employee had the option of filing an appeal with OEA within thirty calendar days of the effective date of his termination. Employee's failure to file a timely appeal with this Office precludes the Undersigned from addressing her substantive arguments.

Based on the foregoing, I find that Employee has failed to meet his burden of proof on the issue of jurisdiction. For this reason, his Petition for Appeal must be dismissed.

² *Id.*

ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE