THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
ERNEST SPRIGGS, Employee	OEA Matter No. 1601-0010-06
v.	Date of Issuance: February 17, 2006
D.C. DEPARTMENT OF PUBLIC WORKS, Agency	ERIC T. ROBINSON, Esq. Administrative Judge

Angela Pringle, Employee Representative
Christine Davis, Esq., Agency Representative

INTIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 27, 2005, Ernest Spriggs (hereinafter "the Employee") filed a petition for appeal with the Office of Employee Appeals (hereinafter "the Office") contesting the D.C. Department of Public Works (hereinafter "the Agency") action of terminating his employment. On December 8, 2005, this matter was assigned to me. On that same date, I issued an Order Convening a Prehearing Conference set to occur on January 18, 2006. Prior to the Prehearing Conference, both parties were required to file Prehearing Statements. Along with its Prehearing Statement, the Agency filed a Motion to Dismiss. Agency's basis for this motion was that this Office lacks jurisdiction in this matter because Employee's Petition for Appeal was not timely filed. The Prehearing Conference was held as scheduled. During it, the issue of this Office's jurisdiction was discussed. Based on the parties' positions as stated during the Prehearing Conference and in the documents of record, I decided that an Evidentiary Hearing was unnecessary. Consequently, I Ordered both parties to submit final legal briefs focusing on whether or not this Office has jurisdiction over this matter. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

> 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:
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> > 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 629.2, *id.*, states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing."

FINDING OF FACTS, ANALYSIS, AND CONCLUSION

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) 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]. . . .

This Office has no authority to review issues beyond its jurisdiction. *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ ( ). Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. *See Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ ( ); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ ( ); *Maradi v. District of Columbia Gen.*

Hosp., OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995), __ D.C. Reg. __ ( ).

The jurisdiction of this Office is limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade or suspensions of ten days or more; or reductions in force. OEA Rule 604.1, 46 D.C. Reg. 9299 (1999). However, an appeal filed pursuant to Rule 604.1 *must* be filed within thirty (30) days of the effective date of the appealed agency action. OEA Rule 604.2, *id.* (emphasis added).

At the time of his termination, the Employee was working for the Agency as a Motor Vehicle Operator. The Employee had held this position since being promoted to it on December 19, 1999. When the Employee was promoted to this position, he listed his home address as 4032 Ely Place Southeast, Washington, DC 20019 (hereinafter "Ely Place"). The Agency's final decision to terminate the Employee was codified in a letter dated May 16, 2005 (hereinafter "termination letter"). In it, the Agency justified terminating the Employee from his position based on the recommendation of the Hearing Officer. He found the Employee guilty of misusing government property and insubordination. The effective date of Employee's removal was July 22, 2005. As was stated before, the Employee filed his petition for appeal with this Office on October 27, 2005.

One of the bases for Employee's Jurisdiction argument is that the Ely Place address was not his address at the time that he was terminated. Consequently, he contends that he was not served with written notice of his termination in a timely manner. The result of which was his filing the Petition for Appeal outside of the mandatory 30 day period. The Employee goes on to assert that he repeatedly informed the Agency of his change of address, but the Agency failed to process the address change. To support his argument, the Employee submitted two separate Address, Non-Resident and Tax Withholding Authorization forms with his Jurisdiction Brief. One of these forms listed the Employee's address as 4111 28th Avenue, Temple Hills, Maryland 20748 with an effective date of August 19, 2003. The other form listed the Employee's address as 8109 Veltri Drive, Fort Washington, Maryland 20744 with an effective date of June 13, 2002. Both forms were signed by the Employee on their respective effective dates. I note that the address that the Employee has on file with this Office matches the Fort Washington, Maryland address above.

The Agency counters with several salient points. First, when the Employee was promoted to his last position of record – Motor Vehicle Operator, he requested a residency preference by completing the Residency Preference for Career Service Employment Form. The Agency cites from the Employee's signed Residency Preference for Career Service Employment form dated September 29, 1999, which states in pertinent part:

> I, the undersigned am a bona fide resident of the District of Columbia and claim a residency preference for the position

> indicated above. My current address is 4032 Ely Pl. S.E. Washington, D.C. 20019. I understand that if selected for this position, *I will be required to submit proof of bona fide District residency and to maintain bona fide District residency for a period of five (5) consecutive years from the date of appointment or promotion.* (emphasis added).

The Agency then references the aforementioned Address, Non-Resident and Tax Withholding Authorization forms submitted by the Employee in his jurisdiction brief. The Agency correctly notes that the forms *require* a second signature certifying that the named D.C. Government Employee is a non-resident of the District of Columbia. I find that both forms lacked the non-residence certification. If these forms had been processed as the Employee alleges that he requested, he would have automatically lost his position with the Agency because he elected to use the residency preference when he was initially promoted to the position of Motor Vehicle Operator. As was stated above, the residency preference requires D.C. Government employees who utilize it to "maintain bona fide District residency for a period of five (5) consecutive years from the date of appointment or promotion." The effective dates of both forms were within the five year period as contemplated by the Residency Preference certification. Therefore, I find that the Agency acted properly when it did not process the Address, Non-Resident and Tax Withholding Authorization forms submitted by the Employee in his jurisdiction brief.[1]

The Agency also argues that the Employee did in fact receive his mail at the Ely Place address. On or about March 26, 2005, the Employee went on disability leave from the Agency because of an alleged work place injury. At the time that the Agency sent the termination letter, the Employee was still on disability leave. The D.C. Office of Risk Management was the Agency responsible for disbursing Employee's disability check. The only address that the Agency and the D.C. Office of Risk Management had for the Employee at that time was Ely Place. The U.S. Postal Service never returned the disability checks as undeliverable and the Employee never reported them as lost or stolen.

The Agency also contends that the Employee filed for unemployment benefits on or about October 9, 2005 with the D.C. Department of Employment Services. They note that the Employee listed his Ely Place address on that form. I also note that the Employee filed his Petition for Appeal with this Office eighteen (18) days later listing as his home address the aforementioned Fort Washington, Maryland address.

The Employee argues that "Disability Compensation has the same address that the Agency has because the supervisor had to file the claim for Mr. Spriggs and utilize what information they had." Employee's Jurisdictional Brief at 1. I disagree. If the Employee

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[1] Whether or not the Employee actually submitted these forms is another question entirely and is outside the proper scope of this Decision. The Employee essentially argues that the Agency had the wrong address listed for him since 2002 (the earliest dated form submitted in Employee's Jurisdiction brief). I disagree. If that was the case, it was incumbent upon the Employee to correct the address error in a forthright and expeditious manner. I find that he failed to do so and must ultimately live with the consequences of his inaction.

was no longer residing at the Ely Place residence, how would he reasonably be expected to accept a disability check by mail, at that address? I find that scenario unlikely at best.

The Employee also argues that the Agency could have informed the Employee's mother who also works for the Agency. I find that the Agency was under no requirement to inform anyone but the Employee when it sought to terminate his employment.

Based on the foregoing analysis, I find that the Agency properly served the Employee with his termination letter at his address of record at Ely Place. Therefore, it was the Employee's responsibility to file his petition for appeal in a timely fashion. I conclude that the Employee failed to timely file his petition for appeal with this Office in violation of OEA Rule 604.2, *id.*. Therefore, I must dismiss this matter for lack of jurisdiction.

ORDER

It is hereby ORDERED Agency's Motion to Dismiss is GRANTED and that this matter is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge