

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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:)	
)	
JEFFREY RYNE,)	
Employee)	OEA Matter No. J-0031-16
)	
v.)	
)	Date of Issuance: July 11, 2017
DEPARTMENT OF BEHAVIORAL)	
HEALTH,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Jeffrey Ryne (“Employee”) worked as a Food Service Worker for the Department of Behavior Health (“Agency”). On February 11, 2016, Employee received a notice that he would be terminated from Agency. Employee was removed from his position pursuant to 6B District of Columbia Municipal Regulations (“DCMR”) §307.15, for failure to maintain District of Columbia residency. According to the regulation, failure to maintain residency in the District shall result in forfeiture of employment by the employee.” The effective date of Employee’s termination was February 11, 2016.¹

On March 10, 2016, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He asserted that his termination was unwarranted. He also provided that

¹ *Petition for Appeal*, p. 8 (March 10, 2016).

Agency retaliated against him because he filed an incident report against his supervisor for threatening him and for his testimony on the unsafe and unsanitary conditions at Agency. Further, Employee explained that he was a bonafide resident of the District of Columbia. He explained that he leased a home in Maryland for his children and the mother of his children in his name because she did not make enough money to lease a home on her own. Accordingly, he requested that he be reinstated with back pay.²

Agency filed its response to Employee's Petition for Appeal on April 12, 2016. It stated that Employee's failure to maintain District residency resulted in the forfeiture of his employment. Agency argued that the only proof Employee provided of his residency in the District was a series of District tax returns, which pre-dated the signed lease for his Maryland home. Further, Agency stated that OEA lacked jurisdiction over terminations resulting from non-compliance with a residency requirement. Agency explained that D.C. Official Code § 1-515.01(b) stated that "failure to maintain District residency for the consecutive seven year period shall result in forfeiture of employment." Additionally, it stated that the Part II Implementing Guidance and Procedures, Chapter 3 of the electronic District Personnel Manual ("E-DPM"), at 9.1D, provided that "termination, resulting from noncompliance with a residency requirement cannot be appealed to the Office of Employee Appeals or grieved through any grievance procedure." Accordingly, it requested that OEA dismiss Employee's appeal.³

On May 24, 2016, the OEA Administrative Judge ("AJ") issued her Initial Decision. She agreed with Agency and held that DCMR § 307 outlined the appeal's procedure when determining compliance with the residence requirement. Furthermore, she concluded that pursuant to Chapter 3 of the DPM Part II, at 9.1D, OEA lacked jurisdiction to hear Employee's

² *Id* at 2-6.

³ *Agency's Response to Employee's Petition for Appeal*, p. 1-8 (April 12, 2016).

claims. Therefore, the AJ dismissed the appeal for lack of jurisdiction.⁴

On August 12, 2016, Employee filed a Petition for Review of the Initial Decision. He maintains that he is a resident of the District of Columbia and was falsely terminated on the grounds of not maintaining District residency. Employee states that he has provided proof of his eligibility and status as a District resident. Therefore, Employee requests that this Board reconsider the matter.⁵

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.”⁶ Therefore, OEA has consistently held that the Petition for Review filing requirement is mandatory in nature.⁷

⁴Initial Decision, p. 3 (May 24, 2016).

⁵Employee’s Petition for Review, p. 1 (August 12, 2016).

⁶Also 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)).

⁷*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); *Dametrious McKenny v. D.C. Public Schools*, OEA Matter No. 1601-0207-12, *Opinion and Order on Petition for Review* (February 16, 2016); and *Carolyn Reynolds v. D.C. Public Schools*, OEA Matter No. 1601-0133-11, *Opinion and Order on Petition for Review* (May 10, 2016).

In the current case, the Initial Decision was issued on May 24, 2016. Therefore, Employee had thirty-five days after that date to file an appeal with the OEA Board. Employee did not file his petition until August 24, 2016. This is three months after the issuance of the Initial Decision in this matter. Because the deadline is mandatory, this Board is unable to address any issues raised by Employee in his Petition for Review. Therefore, the Petition for Review is denied.⁸

⁸ *Assuming arguendo* that we could consider the matter, this Board would still deny Employee's petition. As the AJ provided in her Initial Decision, the proceedings for residency matters are outlined in DCMR § 307. It provides that Agency shall designate the hearing officer to determine these matters. Moreover, as the AJ held, the DCMR instructions for residency matters clearly provide that "termination resulting from non-compliance with a residency requirement cannot be appealed to the Office of Employee Appeals or grieved through any grievance procedure." Thus, OEA lacks jurisdiction over this case.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.