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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
KELLY BAIDEN	)	OEA Matter No. 1601-0214-04
Employee	)	
	)	Date of Issuance: June 10, 2005
v.	)	
	)	Lois Hochhauser, Esq.
D.C. HOUSING AUTHORITY	)	Administrative Judge
Agency	)	

Kelly Baiden, Employee  
Hans Froelicher, Agency Representative

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition for appeal with the Office of Employee Appeals (OEA) on August 19, 2004, challenging Agency's decision to terminate his employment, effective February 23, 2004. At the time of the suspension, Employee was in permanent and career status, and had been employed by Agency for approximately five years.

The matter was assigned to this Administrative Judge on or about March 17, 2005. Since Employee listed the effective date of the removal as February 23, 2004, which is consistent with the final agency notice issued on that date, the Administrative Judge issued an Order on March 21, 2005 directing Employee to submit legal and/or factual arguments to support his position that the petition was timely filed. His submission was due to be filed by April 7, 2005. A copy of this Office's Rules accompanied the Order. Employee was also notified that failure to respond to the Order, *i.e.*, failing to file a submission, could result in the imposition of sanctions, including the dismissal of the petition. Finally, the parties were

notified that the record would close on April 7, 2005 unless they were notified to the contrary. Employee did not respond to the Order, and the record closed on April 7, 2005.

### JURISDICTION

This Office's jurisdiction was not established.

### ISSUE

Should this matter be dismissed?

### ANALYSIS AND CONCLUSIONS

Employees have the burden of proof on issues of jurisdiction, including timeliness of filings, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). It is undisputed that Employee filed a petition for appeal on August 19, 2004, challenging his removal from employment which had an effective date of February 23, 2004. An appeal must be filed with OEA within thirty days of the effective date of the appealed agency action, pursuant to OEA Rules 604.1 and 604.2, 46 D.C. Reg. at 9299. The time limit for filing an appeal with this Office is mandatory and jurisdictional in nature. *See, e.g., White v. District of Columbia Fire Department*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (September 2, 1994), \_\_ D.C. Reg. \_\_\_\_ ( ). The Administrative Judge concludes that the petition for appeal was untimely filed. Employees have the burden of proof on issues of jurisdiction, including the issue of timeliness. OEA Rule 629.2, 46 D.C. Reg. at 9317. Employee has not met this burden, and therefore this petition for appeal should be dismissed.

In addition, this Office has long held that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal pursuant to OEA Rule 622.3, 46 D.C. Reg. at 9313. Failure to prosecute includes the failure to “[s]ubmit required documents after being provided with a deadline for such submission.” Employee failed to respond to the Order issued on March 21, 2005. The Order was sent to Employee by mail, postage prepaid, to his last known address and was not returned. Employee did not seek additional time to respond. Employee was notified that failure to respond could result in the dismissal of the petition. The Administrative Judge concludes that Employee's failure to comply with the Order provides an independent basis upon which to dismiss this petition.

### ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

Lois Hochhauser / DH  
LOIS HOCHHAUSER, Esq.  
Administrative Judge