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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
KATRINA BUNTER,)	
Employee)	OEA Matter No.: J-0138-13
)	
v.)	Date of Issuance: November 20, 2013
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	STEPHANIE N. HARRIS, Esq.
Agency)	Administrative Judge
)	

Katrina Bunter, Employee *Pro-Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 20, 2013, Katrina Bunter (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Corrections’ (“Agency”) adverse action of removing her from service. In response to Employee’s Petition for Appeal, Agency filed its Answer on September 25, 2013.

I was assigned this matter on August 29, 2013. After reviewing the case file and the documents of record, I issued an Order dated July 11, 2013, wherein I questioned whether OEA may exercise jurisdiction over the instant matter because of allegations that Employee’s Petition for Appeal was not filed within thirty (30) calendar days of her termination effective date.

Employee was ordered to submit a written brief, together with copies of cited statutes, regulations, and cases to address whether this matter should be dismissed for lack of jurisdiction on or by October 30, 2013. Employee timely submitted her brief on October 24, 2013. Agency had the option to submit a brief, but opted not to do so. After reviewing the record, I have determined that no further proceedings in this matter are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) 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:

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 *id.* states:

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

According to a June 5, 2010 letter from Agency ("Termination Letter"), Employee was informed that the effective date of her separation was June 20, 2013. The Termination Letter stated in pertinent part:

"If you are a permanent employee of DCPS, you may elect to file an appeal of this action with the Chancellor and request a hearing on this matter in accordance with 5-E DCMR §1406.3, or you may file an appeal with the Office of Employee Appeals. You may not however do both...If you elect to file an appeal with OEA, you must do so within thirty (30) calendar days of the effective date of your termination. A copy of the OEA Rules and the appeal form is attached to this letter."

As noted above, OEA Rule 628.1 states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, amended certain sections of the Comprehensive Merit Personnel Act ("CMPA") pertaining to this Office, including amended D.C. Code § 1-606.3(a), which states that "[a]ny appeal [to this Office] shall be filed within [thirty] 30 days of the effective date of the appealed agency action."

Pursuant to OEA Rule 628.2, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat 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.” This Office has no authority to review issues beyond its jurisdiction.¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.²

The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.³ In *McLeod v. D.C. Public Schools*, this Office held that the only situation in which an agency may not “benefit from the [30-day] jurisdictional bar” is when an agency fails to give the employee “adequate notice of its decision and the right to contest the decision through an appeal.”⁴

The record shows that Employee’s termination letter was dated June 5, 2013 and the effective date of her separation from service was June 20, 2013. In Employee’s Petition for Appeal and her Brief, Employee acknowledges that she received her Termination Letter on June 5, 2013.⁵ However, she did not file her Petition for Appeal until August 20, 2013, approximately two months after the effective date of her termination. This is well past the statutory thirty (30) day filing deadline. The record shows that Employee was given proper notice regarding her options to file an appeal in response to her termination. Accordingly, because Employee failed to file her Petition for Appeal with this Office within the statutory thirty (30) day deadline, I find that Employee is precluded from pursuing her appeal before this forum.

Further, although Employee has provided detailed reasons for her failure to timely file her appeal, this Office has consistently held that time limits for filing appeals are mandatory in nature.⁶ The only exception that will excuse a late filing is where an agency neglected to provide an employee with the proper notification of appeal rights.⁷ In the instant matter, Employee does not claim that she was unaware of the filing deadline and acknowledged that she received the notice as indicated by Agency.

¹ See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

² See *Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

³ See *Annie Keitt v. D.C. Public Schools, Division of Transportation*, OEA Matter No. J-0082-09, *Opinion and Order on Petition for Review* (January 26, 2011); *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).*District of Columbia*

⁴ OEA Matter No. J-0024-00 (May 5, 2003)

⁵ Petition for Appeal, p. 2 (August 20, 2013); Employee Brief, p.1 (October 24, 2013).

⁶ See also *Annie Keitt v. D.C. Public Schools, Division of Transportation*, OEA Matter No. J-0082-09, *Opinion and Order on Petition for Review* (January 26, 2011); *Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), citing *district of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) and *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *James Dais 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); and *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).

⁷ See OEA Rule 604.2 59 DCR 2129 (March 16, 2012); See also *Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, *Opinion and Order on Petition for Review* (June 27, 2008) citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003); *Jones v. D.C. Public Schools, Department of Transportation*, OEA Matter No. 1601-0077-09, *Opinion and Order on Petition for Review* (May 23, 2011); *Black v. D.C. Office of the State Superintendent of Education*, OEA Matter No. J-0180-11 (February 13, 2012); *Crockett v. D.C. Department of Public Works*, OEA Matter No. J-0064-12 (April 23, 2012).

Accordingly, I find that Employee has failed to meet her burden of proof and therefore, OEA lacks jurisdiction over the instant matter. Consequently, the undersigned is unable to address the factual merits, if any, of this matter.

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge