

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MARGARET I. DAVIS)	
Employee)	OEA Matter No. J-0135-08
)	
v.)	Date of Issuance: April 28, 2009
)	
D.C. PUBLIC SCHOOLS)	Rohulamin Quander, Esq.
DIVISION OF TRANSPORTATION)	Senior Administrative Judge
Agency)	
_____)	
Frank McDougald, Esq., Agency representative)	
Margaret I. Davis, Employee <i>pro se</i>)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 5, 2008, Margaret I. Davis (the “Employee”), *pro se*, a former school bus driver for the D.C. Public Schools’ Division of Transportation (the “Agency”), filed an appeal with the D.C. Office of Employee Appeals (the “Office” or “OEA”), seeking a reversal of Agency’s action terminating her employment, effective May 21, 2008, for unexcused absence without leave (AWOL). Although the recited effective date of termination was listed as May 21st, the notice of termination letter (Final Agency Action Letter) was dated May 29, 2009, and apparently issued on that same date. The case file contains three medical excused absences reports from Norman G. Mckoy, M.D., stating that Employee was under his professional care between October 4, to October 9, 2007, December 3, to December 16, 2007, and December 17, 2007, to January 6, 2008. This matter was assigned to me as the deciding administrative judge (the “AJ”) on September 15, 2008.

The issue of the Office’s jurisdiction (timeliness of filing her appeal) was in question. Employee’s appeal reflected that she moved on or about December 29, 2007. Employee asserted that although she had notified Agency of her new address, Agency failed to correct its records and to send the termination notice directly to her new address. Therefore, she was delayed in being notified of her termination, and likewise in her ability to make a timely appeal of her termination. With the burden of proof resting upon Employee’s shoulders, as recited in OEA Rule 629.2, on September 16, 2008, I issued an Order, directing Employee to submit proof that she did notify Agency of her new address. Although Employee did respond, she provided nothing specific to

buttress her initial position that she provided notice to Agency of her relocation.

Agency, upon notification of the Petition, filed an Answer on November 18, 2008, which included a motion to dismiss the appeal for lack of jurisdiction. The essence of Agency's answer and motion was: 1) Employee's filing of her petition was untimely, not registered within the 30 days mandated by law; 2) Employee failed to exhaust her administrative remedies at the Agency level before filing her appeal with the Office; and 3) Agency had just cause to terminate Employee.

Because the threshold issue of whether the Office had jurisdiction to proceed had been raised by Agency, I elected to convene a Status Conference on January 15, 2009. Employee appearing *pro se*, and reiterated her earlier position about having notified Agency of her moving. In anticipation of the Status Conference, Employee obtained a letter from Dr. Mckoy, dated January 6, 2009, stating that she had been his patient since April 12, 2006, and that he has been treating her for anxiety and depression, most recently between the dates of December 3, 2007, to January 6, 2008. His letter did not address any level of professional care between the dates of January 6, 2008, and January 6, 2009. The letter also stated that Employee had been referred to see a psychologist, which Employee stated to this AJ she did not see, due to her personal finances.

Both Agency and Employee made their factual representations and legal arguments on this issue. Based on their arguments, I have determined that there are no remaining material issues of fact, and thus, I closed the record.

ISSUE

Whether this Office has jurisdiction in this matter

JURISDICTION

The jurisdiction of this Office was not established.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee drove a school bus for Agency's Division of Transportation for three years, but had a very spotty attendance record, which adversely impacted upon Agency's ability to keep to its schedule and obligation to transport certain DCPS children to and from school in a timely manner. Employee's supervisors had confronted her about her time and attendance, and were aware that she was having some personal problems, although the details were unknown to Agency's supervisory staff.

Between early October and May 2008, when Employee was terminated, she was frequently absent, although sometimes with a medical excuse, and was totally absent from work from about the first week of December 2007, until termination in May 2008. After about 10 days of absence, Agency deemed Employee to have gone from an AWOL status to a job abandonment

status. Although Employee did file three medical excuses for a portion of the time, there were no medical excuses to address her absence from about January 7, 2008, until her May 2008 termination. The letter from Dr. Mckoy, dated January 6, 2009, was submitted long after Employee's termination, and received in anticipation of the January 15, 2009, Status Conference.

Employee moved on December 29, 2007, and maintained that Agency was notified of the address change. Still, the termination notice letter, dated May 29, 2008, was sent to the old address. Employee admitted that she received the letter at least by July 1, 2008, that it contained notification about her appeal rights, the appellate form, and the Office's rules, and that she understood its contents and directives regarding the 30 day window for noting an appeal to this Office. Further, she appreciated that time was of the essence in the matter. However, she did not file her appeal until August 5, 2008. As well, despite more than one inquiry from this AJ regarding the apparent delay in noting her appeal, Employee provided no satisfactory answer that addressed the critically significant days between July 1, and August 5, 2008.

Effective October 22, 1998, the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 ("OPRAA") amended certain sections of the D.C. Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, D.C. Code § 1-601.1 *et seq.* ("CMPA"). Of specific relevance to this Office, § 101(d) of OPRAA amended Section 603(a) D.C. Code § 1-606.3(a) of the Code by restricting the Office's jurisdiction over Employee appeals and reads as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to title XII-A), an adverse action for cause that results in removal, reduction in grade, or suspension of 10 days or more (pursuant to title XVI-A), or a reduction in force (pursuant to title XXIV) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. **Any appeal shall be filed within 30 days of the effective date of the appealed agency action.**
Emphasis added.

Thus, as of October 22, 1998, this Office no longer has jurisdiction over, *inter alia*, appeals filed beyond 30 days of the effective date of the appealed agency action.

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). "[A] statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language." *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), _ D.C. Reg. __ ().

Here, as of October 22, 1998, § 101(d) of OPRAA "clearly and unambiguously" removed appeals filed more than 30 days of the effective date of Agency's action from the jurisdiction of the

Office. The filing deadline is now statutory and thus cannot be waived.¹ The time limit for filing an appeal with an administrative adjudicatory agency, as with a court, is mandatory and is considered a jurisdictional matter.² Employee's appeal of the agency's termination action was filed on August 5, 2008, more than 30 days after the effective date of the termination, even allowing an extra 30 days to accommodate that Employee relocated and the mail was slow in getting to her. Employee has proffered no legally justifiable argument that would erase the mandate of D.C. Code § 1-606.3(a).

I find that, based upon the above mandatory filing requirement, Employee's August 5, 2008, appeal to this Office was untimely filed. I conclude that the Office lacks jurisdiction to decide this case. Further, given the disposition of this matter on the issue of jurisdiction, there is no need to address the substantive issues raised in the Petition for Appeal, or Agency's other two issues, i.e., failure to exhaust administrative remedies and termination for cause. Thus, the matter must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

ROHULAMIN QUANDER, Esq.
Senior Administrative Judge

¹ *White v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (Sept. 2, 1994), ___D.C. Reg. ___ () at 2.

² See *District of Columbia Pub. Employees Bd. V. Metropolitan Police Dep't*, 593 A.2d 641 (D.C. 1991); *Thomas v. District of Columbia Dep't of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).