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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: J-0032-11
ONA BARR,)	
Employee)	
)	Date of Issuance: February 18, 2011
v.)	
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 3, 2010, Ona Barr (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the Office of the State Superintendent of Education’s decision to terminate her. Agency’s notice informed Employee that she was being separated from service because of her alleged neglect of duty and failure to observe precautions regarding safety while driving a bus in the District. The incident from which the charges stemmed occurred on May 24, 2010 when Employee was involved in a car accident in Southeast D.C. Employee was ordered to attend traffic school and was required to pay a fine of twenty-five dollars. Her termination was effective on September 9, 2010.

This matter was assigned to me on or around January 7, 2011. I issued an Order on January 14, 2011, directing Employee to present legal and factual arguments to support her argument that this Office has jurisdiction over her appeal. Employee was advised that she had the burden of proof with regard to the issue of jurisdiction. Employee was also notified that the appeal would be dismissed if she failed to respond to the Order by January 24, 2011. Employee submitted a response to the Order on January 24, 2011. After reviewing the documents of record, I have determined that a hearing is not warranted in this case. The record is now closed.

JURISDICTION

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

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

According to a letter from Agency to Employee (“Termination Letter”), she was informed that the effective date for her separation from service was September 9, 2010. The termination letter stated in pertinent part: “You may consult with your union about your right to pursue a grievance challenging this decision. You also have the right to appeal this action to the District of Columbia Office of Employee Appeals....”

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” OEA Rule 629.1, states that 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: “[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.”

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. Amended D.C. Code §1-606.3(a) states: “Any appeal [to this Office] shall be filed within 30 days of the effective date of the appealed agency action.”

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.¹ 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 the agency fails to give the employee “adequate notice of its decision and the right to contest the decision through an appeal.”²

As previously mentioned, Employee was removed from service with an effective date of September 9, 2010. However, she did not file her petition for appeal until December 3, 2010, approximately three months after the effective date of her termination. This is well past the 30 day filing deadline as discussed *supra*. Employee was given proper notice regarding her options to file an appeal in response to her termination. The options discussed in the termination letter required employee to make an election of remedies. Because she failed to file her petition for appeal within the 30 day deadline with this Office, I find that Employee is precluded from pursuing her appeal before this forum.

¹ See, e.g., *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); *White v. D.C. Fire Department*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (September 2, 1994), __ D.C. Reg. __ ().

² OEA Matter No. J-0024-00 (May 5, 2003), __ D.C. Reg. __ ().

Employee has therefore failed to meet her burden of proof regarding jurisdiction. Based on the foregoing reasons, this matter must be dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Sommer J. Murphy, Esq.
Administrative Judge