

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Kimberly Grooms,)
Employee)
)
v.)
)
Department of Corrections,)
Agency)

OEA Matter No. 1601-0115-15
Date of Issuance: January 7, 2016
Joseph E. Lim, Esq.
Senior Administrative Judge

Jacqueline Johnson, Agency Representative
Kimberly Grooms, Employee *pro se*

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 3, 2015, Employee, a Correctional Officer in the Career Service, filed a petition for appeal from Agency’s action summarily suspending her from her position for ninety (90) calendar days effective April 24, 2015. This appeal was assigned to me on October 14, 2015.

After Agency asserted in its reply that this appeal should be dismissed for lack of jurisdiction, I ordered Employee to meet her burden of proof that the Office of Employee Appeals (“OEA”) has jurisdiction over her appeal. To date, Employee never responded. Because this matter could be decided based on the documents of record, no additional proceedings were held. The record is closed.

JURISDICTION

Due to Employee’s untimely filing, the Office lacks jurisdiction over this matter.

ISSUE

Whether this matter must be dismissed for lack of jurisdiction as a result of Employee’s untimely filing.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

The following facts are not subject to genuine dispute:

1. Employee, a Correctional Officer for more than seven years, was served with an advance notice on April 7, 2015, proposing a ninety (90) calendar days suspension without pay for failing to maintain a valid driver's license, a critical requirement and condition of employment for a correctional officer.
2. On April 21, 2015, Employee received the final decision sustaining the proposed suspension. The suspension was to be effective April 24, 2015.
3. The final decision advised Employee of her right to appeal the decision either through the union's collective bargaining agreement grievance procedures, or by filing an appeal with the OEA. It advised Employee that she had ten days to file a union grievance or thirty days to file an appeal with OEA.
4. The final decision package included the OEA appeal application and instructions, as well as a complete copy of the OEA Rules of Procedure.
5. It was not until August 3, 2015, more than three months after the effective date of her suspension, that Employee filed the instant petition for appeal with the Office.

Prior to October 21, 1998, the Comprehensive Merit Personnel Act (CMPA), D.C. Law 2-139, D.C. Official Code § 1-601.01 *et seq.* (2001), did not contain a time limit for filing a petition for appeal in this Office. Rather, the Office's Rules and Regulations in effect at that time required a petition for appeal to be filed within 15 business days of the effective date of the action being appealed. *See* OEA Rule 608.2, 39 D.C. Reg. 7408 (1992). Because the filing requirement was not mandated by statute, the Office's Rules specifically permitted an Administrative Judge to waive the requirement for good cause shown. *See* OEA Rule 602.3, 39 D.C. Reg. at 7405.

However, effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Among these amendments was the addition of a statutory time limit for filing an appeal in this Office. The relevant section reads as follows: "Any appeal shall be filed within 30 days of the effective date of the appealed agency action." D.C. Official Code § 1-606.03(a) (2001). The Office's Rules and Regulations have been amended to reflect this change. *See* OEA Rules 604.1 and 604.2, 59 D.C. Reg. 2129 (March 16, 2012).

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. *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). Following these cases, this Office's Board has held that the statutory 30-day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature. See *King v. Department of Corrections*, OEA Matter No. T-0031-01, *Opinion and Order on Petition for Review* (October 16, 2002). Further, in *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003), it was 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." *McLeod*, slip op. at 8. (citations omitted).

OEA Rule 628.2, 59 D.C. Reg. 2129, reads as follows: "The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." According to OEA Rule 628.1, *id*, a party's 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."

In her appeal, Employee failed to state the basis of her appeal. Before I can address the merits of her appeal, the jurisdictional issue must first be tackled. Although she was given the chance, Employee also failed to explain why she did not file her appeal promptly, once she received his notice of termination.

It is clear that Employee unjustifiably failed to comply with the mandatory filing deadline. The 30-day filing deadline is mandatory, and to date this Office has recognized only one exception to that jurisdictional bar – when the agency fails to give the employee "adequate notice of its decision and the right to contest the decision through an appeal." *McLeod, supra*. Here, Agency clearly gave Employee such notice in its final decision. Employee did not exercise due diligence in timely filing her petition for appeal and has failed to present an argument sufficient for me to broaden the scope of the exception to the mandatory filing deadline articulated in *McLeod*.

There is another ground for dismissing Employee's appeal. OEA Rule § 621.3, 628.2, 59 D.C. Reg. 2129 (2012) provides as follows, "If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that failure to follow directives from this Office constitutes a failure to prosecute. See, e.g. *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985).

The employee was warned in each order that failure to comply could result in sanctions including dismissal. The employee never complied. Employee's behavior constitutes a failure to prosecute her appeal and that is sound cause for dismissal.

Therefore, I conclude that Employee has failed to meet her burden of establishing this Office's jurisdiction over his appeal. Thus, Employee's petition for appeal is dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge