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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
RACHEL WOODSON,	)	
Employee	)	OEA Matter No. 2401-0079-13
	)	
v.	)	Date of Issuance: November 4, 2014
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, Esq.
_____	)	Senior Administrative Judge
Rachel Woodson, Employee <i>Pro-Se</i>		
Sara White, Esq., Agency Representative		

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

Rachel Woodson (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools (“DCPS” or “the Agency”) adverse action of removing her from service. Employee’s petition for appeal was date stamped as received by the OEA on April 19, 2013. According to a letter dated February 15, 2013, sent by DCPS addressed to Employee regarding her Notice of Termination (“Termination Letter”), the effective date of Employee’s removal from service was March 17, 2013. I was assigned this matter on or about February 2, 2014. After reviewing the Employee’s petition for appeal, I determined that there existed a question as to whether the OEA has jurisdiction over the instant appeal. Consequently, I issued an order requiring Employee to address said issue in a written brief. Employee complied with said order. After carefully reviewing the Employee’s response, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628 *et al*, 59 DCR 2129 (March 16, 2012) states:

628.1 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 the 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.

628.2 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 FACT, ANALYSIS AND CONCLUSIONS

According to the Termination Letter, the Employee was informed that the effective date of her termination was March 17, 2013. The Termination Letter further provided in relevant part that “[y]ou may file an appeal with the [OEA]... within 30 calendar days of the effective date of your separation. A copy of the OEA Rules and appeal form are attached to this letter.”

In her response to my order, Employee asserts that she was not given the appeals form in a timely manner. She asserts that she spoke with Erin K. Pitts, DCPS Director of Labor Management and Employee Relations (“Pitts”) and that she had not received her documentation. In order to buttress her argument, Employee included a photocopy of the FedEx envelope used by Pitts to send her Termination Letter. Where Employee’s argument fails is that the FedEx envelope has a postmark of March 1, 2013. As was mentioned previously, Employee was removed from service with an effective date of March 17, 2013. However, her petition for appeal was date stamped as received by the OEA on April 19, 2013. Even taking into consideration that the 30<sup>th</sup> day (April 16, 2013) was a District government holiday (Emancipation Day) I find that Employee’s appeal was still filed beyond the 30 day deadline for filing. *See* OEA Rule 604.2, 59 DCR 2129 (March 16, 2012).

Employee alleges that she mailed her petition for appeal on April 17, 2013. Of note, the section of the petition for appeal where the OEA places its date stamp also includes a separate section where the postmark date, if applicable, can be notated. On Employee’s petition for appeal, this section was blank. Of further note, it is customary for the OEA office staff to retain the envelope (in the case file) containing a petition for appeal when it is sent via postal mail. Employee’s petition for appeal does not have an envelope attached. Accordingly, I find that I can only rely on the date stamp that is on Employee’s petition for appeal which is one day beyond the mandatory deadline for filing a petition for appeal with the OEA.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”) modified certain sections of the Comprehensive Merit Personnel Act (“CMPA”) pertaining to this Office. Of specific relevance to this matter is § 101(d) of OPRAA, which amended § 1-606.3(a) of the Code (§ 603(a) of the CMPA) in pertinent part as follows: “Any appeal [to this Office] shall be filed within 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). Further, “[t]he time limits for filing with administrative adjudicatory agencies, as with the courts, are mandatory and jurisdictional matters.” *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991).

As was stated previously, OPRAA “clearly and unambiguously” removed appeals filed more than 30 calendar days after the effective date of the action being appealed from the jurisdiction of this Office. “Further, the 30-day filing deadline is statutory and cannot be waived.” *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999), \_\_ D.C. Reg. \_\_ ( ). Moreover, OEA Rule 604 *et al*, 59 DCR 2129 (March 16, 2012) provides as follows:

- 604.1 Except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01, *et seq.* (2006 Repl. & 2011 Supp.)) or §604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:
- (a) A performance rating which results in removal of the employee;
  - (b) An adverse action for cause which results in removal;
  - (c) A reduction in grade;
  - (d) A suspension for ten (10) days or more;
  - (e) A reduction-in-force; or
  - (f) A placement on enforced leave for ten (10) days or more.

604.2 **An appeal filed pursuant to § 604.1 must be filed within thirty (30) calendar days of the effective date of the appealed agency action.**

**Emphasis Added.**

I find that the Termination Letter adequately warned Employee of her option to personally appeal to the OEA in a timely manner. However, because Employee failed to file a

petition for appeal in the instant matter with the OEA within the 30 day filing deadline, I find that she is precluded from pursuing said appeal through the OEA.

Based on the foregoing, I further find that the Employee has not established that this Office has jurisdiction over this matter. Because of the Employee's failure to timely file her petition for appeal with the OEA, I conclude that I must dismiss this matter for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.<sup>1</sup>

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.  
Senior Administrative Judge

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<sup>1</sup> Since Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of any arguments that Employee noted in her petition for appeal.