THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Eddie Fields)	OEA Matter No. 1601-0110-05
Employee)	
)	Date of Issuance: October 11, 2005
v.)	
)	Sheryl Sears, Esq.
)	Administrative Judge
Department of Insurance, Securities)	
And Banking)	
Agency)	

Eddie Fields, Employee, *Pro Se*
Rhonda Blackshear, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

On October 21, 2003, Lawrence H. Mirel, Commissioner, notified Employee that he was "summarily removed from [his] position as an Administrative Aide. . ." for alleged acts of sexual harassment against a colleague. Agency charged that Employee's behavior threatened the integrity of government operations and constituted an immediate hazard to the agency, to other District employees, and to the complaining employee in violation of 16 DPM 1617.1 (a) and (b). On February 28, 2004, Stephen C. Taylor, Hearing Officer, issued "Findings of Fact, Conclusions of Law and Recommendation." Taylor recommended that Agency sustain the action. On March 31, 2005, Lawrence H. Mirel, the deciding official, issued a notice to Employee of Agency's final decision to sustain the summary removal.

Employee's then-attorney Eugene Kim, Esq., acknowledged certified mail receipt of the final decision on April 4, 2005. Agency advised Employee of his right to appeal the final decision to the Office of Employee Appeals within thirty days and provided Employee with the address and phone number of this Office along with a copy of the appeal form and the regulations. The deadline for Employee to file his appeal was May 4, 2005.

On July 5, 2005, some three months later, Employee filed his appeal. On August 31, 2005, Agency filed a motion to dismiss the appeal for lack of jurisdiction due to untimely filing. On September 6, 2005, this Judge ordered Employee to respond to Agency's motion no later than September 23, 2005. Employee failed to make a submission. The record is now closed.

JURISDICTION

As will be explained in detail in the "Analysis and Conclusions" section, this Office does not have jurisdiction over Employee's appeal.

ISSUE

Whether Employee's appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999), provides that "[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction." Employee has the burden of proving that this Office has jurisdiction over his appeal.
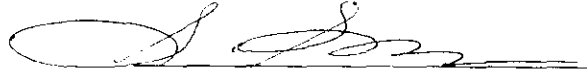
ANALYSIS AND CONCLUSIONS

The Office of Employee Appeals was established by the D.C. Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Code § 1-601.01 *et seq.* Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended some sections of the CMPA. Of relevance to this matter is that OPRAA added a statutory time limit for filing an appeal in this Office.

The amended language 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). *See also* OEA Rule 604.2, 46 D.C. Reg. at 9297. As noted, Employee filed his appeal nearly three months after it was due. Thus, he failed to meet the statutory deadline for filing. When ordered to make a written submission showing why his appeal should not be dismissed for failing to meet that deadline, Employee did respond. Employee's appeal does not invoke the jurisdiction of this Office. Therefore, it must be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:

Sheryl Sears, Esq.
Administrative Judge