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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ANDRE ROBINSON,)	
Employee)	
)	OEA Matter No.: 1601-0303-10
v.)	
)	Date of Issuance: November 19, 2012
DISTRICT OF COLUMBIA)	
DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	SOMMER J. MURPHY, Esq.
_____)	Administrative Judge
Andre Robinson, Employee, <i>Pro Se</i>		
Andrea Comentale, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 30, 2010, Andre Robinson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Youth Rehabilitation Services’ (“Agency”) action of terminating his employment based on Employee’s urine sample testing positive for illegal substances.

I was assigned this matter in July of 2012. On July 27, 2012, I ordered the parties to submit briefs on the issue of whether this Office may exercise jurisdiction over this appeal because Employee’s appeal was filed more than thirty (30) days after the effective date of his termination. Both parties submitted briefs in response to the Undersigned’s Order. The record is now closed.

JURISDICTION

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

ISSUE

Whether OEA may exercise jurisdiction over Employee’s appeal.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether OEA has jurisdiction over Employee's appeal. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, the burden of proof is defined under a 'preponderance of the evidence' standard. Preponderance of the evidence means "[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."

This Office has no authority to review issues beyond its jurisdiction. Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.¹ According to DCMR § 604.2, [a]n appeal filed pursuant to § 604.1 must be filed within thirty (30) calendar days of the effective date of the appealed agency action.

In his brief, Employee states that he attempted to contact his union regarding filing a grievance in response to Agency's action of terminating him. Employee argues that he then filed an appeal with OEA because of the union's failure to pursue a grievance on his behalf.² Agency contends that Employee's failure to file a Petition for Appeal in a timely manner prohibits this Office from exercising jurisdiction over Employee's appeal.

In this case, Employee received the Notice of Final Decision on Proposed Removal on March 8, 2010.³ Therefore, under DCMR § 604.2, Employee had thirty (30) calendar days, or until April 7, 2010, to file an appeal with OEA. Employee did not file a Petition for Appeal with this Office until April 30, 2010. While it is unfortunate that Employee was unable to procure representation from his union to pursue a grievance before Agency, his Petition for Appeal was nonetheless filed beyond the thirty (30) day jurisdictional time limit. Accordingly, Employee's Petition for Appeal must be dismissed for lack of jurisdiction and I am unable to address the merits, if any, of this matter.

¹ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

² Employee Brief (August 8, 2012).

³ It should be noted that the Notice of Final Decision submitted to this Office reflects an effective termination date of February 26, 2010.

ORDER

It is hereby ORDERED that Employee's appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE