

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
Tenecia Mosley) OEA Matter No. J-0014-16
Employee)
) Date of Issuance: February 24, 2016
v.)
) Senior Administrative Judge
D.C. Public Schools) Joseph E. Lim, Esq.
Agency)
_____)
Lynette Collins, Esq., Agency Representative
Tenecia Mosley, Employee *pro se*

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 4, 2015, Tenecia Mosley (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) final decision to remove her from her position as a Program Coordinator. Employee was removed because her position was eliminated as part of a reduction-in-force. Employee’s termination was effective on August 7, 2015.

I was assigned this matter in December 10, 2015. On December 18, 2015, Agency submitted a motion arguing that OEA lacked jurisdiction over Employee’s appeal. On December 24, 2015, I issued an order directing Employee to submit a brief addressing whether her appeal should be dismissed for lack of jurisdiction because she was in probationary status at the time she was terminated and because her appeal was untimely. Employee never submitted a response. After reviewing the record, I determined that there were no material issues of fact that would require an evidentiary hearing. The record is now closed.

JURISDICTION

Jurisdiction has not been established in this matter.

ISSUE

Should Employee’s appeal be dismissed?

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

This Office's jurisdiction is established pursuant to the District of Columbia's Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code § 1-601-01, *et seq.* (2001). OEA Rule 628.2 states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..."¹ 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."

OEA Rule 604.2 provides that an appeal with this Office must be filed *within thirty (30) calendar days of the effective date of the appealed agency decision.*² This Office has no authority to review issues beyond its jurisdiction. The time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional matters. *See Zollicoffer v. District of Columbia Pub. Sch.*, 735 A.2d 944 (D.C. 1999) (quoting *District of Columbia Pub. Emp. Relations Bd. v. District of Columbia Metro. Police Dep't*, 593 A.2d 641, 643 (D.C. 1991)). A failure to file a notice of appeal within the required time period divests this Office of jurisdiction to consider the appeal. *See Id.* Here, Employee's termination became effective at the close of business on August 7, 2015.³ Employee filed her Petition for Appeal with this Office on December 4, 2015, beyond the 30-day limit prescribed in D.C. Official Code § 1-606.03(a) and OEA Rule 604.2. Accordingly, I find that Employee has not established the jurisdiction of this Office over her appeal.

In the alternate, and in accordance with OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), this Office has long maintained that a petition for appeal may be dismissed when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to all Orders that I issued. The Order had specific time frames and contained warnings that failures to comply could result in penalties, including the dismissal of the petition. The Order was sent to Employee at the address she listed as her home address in her petition and in her submissions. They were sent by first class mail, postage prepaid and were not returned. They are presumed to have been delivered in a timely manner. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).

ORDER

It is hereby ORDERED that Employee's Petition for Appeal is DISMISSED for lack of jurisdiction, and in the alternate, DISMISSED for failure to prosecute.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge

¹59 DCR 2129 (March 16, 2012).

² *Id.*

³ *See* Petition for Appeal, Attachment (December 4, 2015).