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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
WILMA YOUNG JONES,	)	
Employee	)	OEA Matter No. J-0002-14
	)	
v.	)	Date of Issuance: November 8, 2013
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, Esq.
_____	)	Senior Administrative Judge
Wilma Young Jones, Employee <i>Pro-Se</i>		
Sara White, Esq., Agency Representative		

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

Wilma Young Jones (“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 October 1, 2013. Of note, according to a letter dated June 27, 2013, sent by DCPS addressed to Employee regarding her Notice of Ineffective IMPACT Rating and Termination (“Termination Letter”), the effective date of Employee’s removal from service was August 10, 2013. I was assigned this matter on or about October 11, 2013. 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 on October 18, 2013, requiring Employee to address said issue in a written brief. Employee complied with said order. After carefully reviewing 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 August 10, 2013. The Termination Letter further provided in relevant part that “[y]ou may file an appeal with the [OEA]. Your appeal must be filed within thirty (30) calendar days of the effective date of your termination. You must submit your appeal directly to OEA... A copy of the OEA Rules and appeal form are attached to this letter.”

In her response to my order dated October 18, 2013, Employee gives the following reasons as to why her petition for appeal should not be dismissed on jurisdictional grounds:

1. DCPS allegedly failed to inform her that her IMPACT score would make her ineligible for rehire by DCPS.
2. Employee’s son has Down’s syndrome and has been on dialysis since 2009.
3. Employee was forced to move in June of this year.
4. Employee states that she is clinically depressed.

Given the effective date of her removal (August 10, 2013), Employee’s petition for appeal would have had to have been date stamped by the OEA, or at the very least postmarked, on or before September 10, 2013, in order to be considered a timely submission. Employee’s petition for appeal was date stamped as received by the OEA on October 1, 2013. I find that this date is well past the OEA’s 30 day filing deadline. *See* OEA Rule 604.2, 59 DCR 2129 (March 16, 2012).

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).

I empathize with Employee’s plight. However, 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 calendar day filing deadline, I find that she is precluded from pursuing said appeal through the OEA.

Based on the foregoing, I further find that Employee has not established that this Office has jurisdiction over this matter. Because of 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.