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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: J-0030-15
ASAKI SHITTU,)	
Employee)	
)	Date of Issuance: February 24, 2015
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Stephen White, Employee Representative)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 16, 2015, Asaki Shittu (“Employee”) file a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the D.C. Public Schools’ (“Agency”) action of terminating her employment. Employee was charged with: 1) Dishonesty; and 2) Misuse of Official Position or Unlawful Coercion of an Employee for Personal Gain. Employee previously worked as an Administrative Aide at Noyes Education Campus. The effective date of her termination was November 25, 2014.

This matter was assigned to me in January of 2015. On February 4, 2015, I issued an Order directing Employee to present legal and factual arguments to support her argument that OEA has jurisdiction over the instant appeal. Both Employee, and her representative, Stephen White, submitted responses to the Order. After reviewing the record, the Undersigned has determined that an evidentiary hearing is not warranted, as there are no material facts at dispute. The record is now closed.

JURISDICTION

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

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Amended D.C. Code §1-606.3(a) states:

“An employee may appeal 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....”

Thus, §101(d) restricted this Office’s jurisdiction to employee appeals from the following personnel actions only: a performance rating that results in removal; a final agency decision affecting an adverse action for cause that results in removal, a reduction in grade, a suspension of 10 days or more, or a reduction-in-force.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) provides that 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 “that 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 628.2 further states that 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.¹ This Office has no authority to review issues beyond its jurisdiction.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³

In addition, under OEA Rule 604.2, an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed action. The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.⁴ In *McLeod v. D.C. Public Schools*, this Office held that the only situation in which an agency may not “benefit

¹ *Id.*

² See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

³ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁴ See *Annie Keitt v. D.C. Public Schools, Division of Transportation*, OEA Matter No. J-0082-09, *Opinion and Order on Petition for Review* (January 26, 2011); *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

from the [30-day] jurisdictional bar” is when the agency fails to give the employee “adequate notice of its decision and the right to contest the decision through an appeal.”⁵

Employee contends that her union, AFSCME, Local 2921, attempted to schedule a modification of discipline meeting with DCPS, pursuant to the terms of their Collective Bargaining Agreement (“CBA”). However, the modification meeting did not occur until December 19, 2014 because of scheduling conflicts. Employee did not receive Agency’s denial of her proposed modification until January 25, 2015. Employee argues that she did not anticipate having to file an appeal with OEA because AFSCME Local 2921 was confident that Agency would be required to modify the discipline.

In this case, the effective date of Employee’s termination was November 25, 2014. The Final Agency Decision stated that Employee had the right to appeal her termination to the Office of Employee appeals within thirty (30) calendar days of the effective date of termination. The Notice also included OEA’s rules and a copy of this Office’s appeal form. Employee has not offered any credible evidence to support a finding that the jurisdictional time limit for filing a Petition for Appeal with OEA was required to be tolled or waived because of the modification meeting. Employee could have filed an appeal with OEA within the thirty (30) day jurisdictional limit for the purpose of preserving the right to prosecute an appeal before this Office.

Based on a review of the record, I find that Employee received proper notice of her termination and appeal rights to OEA. Employee did not file a Petition for Appeal with this Office until, November 14, 2014, more than thirty (30) days beyond the jurisdictional limit. Employee’s failure to file a timely appeal precludes the Undersigned from addressing the merits of Employee’s arguments. Accordingly, I find that OEA lacks jurisdiction over Employee’s appeal, and the matter must therefore be dismissed.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ
ADMINISTRATIVE JUDGE

⁵ OEA Matter No. J-0024-00 (May 5, 2003).