

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Chiara Forte)	OEA Matter No. 1601-0055-14
Employee)	
)	Date of Issuance: November 3, 2015
v.)	
)	Joseph E. Lim, Esq.
D.C. Public Schools)	Senior Administrative Judge
Agency)	
_____)	
Carl Turpin, Esq., Agency Representative)	
Chiara Forte, Employee <i>pro se</i>)	

INITIAL DECISION

PROCEDURAL HISTORY

On February 19, 2014, Employee, a Teacher, filed an appeal with this Office of Employee Appeals (OEA) contesting Agency’s termination of Employee from her position. An unsuccessful mediation session was held on June 10, 2015. After this matter was reassigned from Judge Harris to me on September 2, 2015, I ordered Employee to respond to Agency’s argument that this Office lack jurisdiction over this appeal. When that failed, I ordered Employee to show cause by October 27, 2015. Employee made a submission. Based on the documents submitted, I find that a hearing is unwarranted. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this matter.

ISSUE

The issue to be decided is whether this Office has jurisdiction in this matter

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Here, it is undisputed that Employee received that her final notice of adverse action on January 3, 2014. Employee’s effective date of termination was January 18, 2014. It is undisputed that Employee filed her appeal with the Office on February 19, 2014.

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, modified certain sections of the Comprehensive Merit Personnel Act (“CMPA”) pertaining to this Office. Of specific relevance to this case is § 101(d) of OPRAA, which amended § 1-606.03(a) of the *D.C. Official Code* (2001) 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.” As well, OEA Rule 628.2, 59 D.C. Reg. 2129, states, “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.”

In addition to the above, OEA Rule 604.2, Jurisdiction, states, “An appeal filed pursuant to Rule 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action. Further, OEA Rule 607.3, Filing Requirements, states: “The date of filing shall be the date the Office time stamps on the document.”

The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as OEA is mandatory and jurisdictional in nature. *See, e.g., District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991) and *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162 (D.C. 1985). This Board has consistently held that the statutory 30 day time limit is mandatory and jurisdictional in nature. *See, e.g., King v. Department of Corrections*, OEA Matter No. T-0031-01, *Opinion and Order on Petition for Review* (October 16, 2002). Employee filed her petition on February 19, 2014, more than 30 days after the effective date. It was not filed in a timely manner.

The only exception that this Board has established is that it will excuse a late filing where an agency neglected to provide an employee with the proper appeal rights notification. *Margaret Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, *Opinion & Order on Petition for Review* (June 27, 2008). In this matter, Employee does not claim that she was unaware of the filing deadline. In her submission, Employee sidestepped the issue of jurisdiction, instead reiterating her desire to be allowed to resign instead.

Agency provided Employee with the appropriate notice of her appeal rights, a copy of OEA Rules, information regarding its website, and an appeal form. Having been afforded the appropriate notice, this petition does not fall within the exception discussed above. This Administrative Judge concludes that the petition was untimely and should be dismissed for lack of jurisdiction.

There is another ground for dismissing this appeal. In its Motion to Dismiss, Agency stated that OEA did not have jurisdiction over Employee’s appeal because Employee filed a grievance with the Washington Teacher’s Union on January 6, 2014, pursuant to the Collective Bargaining Agreement (“CBA”) between her Union and DCPS, disputing her termination.¹

In her appeal form, Employee indicated that she had filed a grievance regarding her removal pursuant to the terms of a collective bargaining agreement (CBA) between her exclusive bargaining representative and Agency before she filed the appeal now before OEA. In her brief, Employee did not address this issue.

This Office’s jurisdiction is conferred upon it by law. It is governed in this matter by D.C. Official Code (2001) §1-616.52 which reads in pertinent part as follows:

¹ Agency’s Response, October 19, 2015.

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter [providing appeal rights to OEA] for employees in a bargaining unit represented by a labor organization.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to Section 1-606.03, or the negotiated grievance procedure, **but not both**. (Emphasis added).

(f) An employee shall be deemed to have exercised their option (*sic*) pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, **whichever occurs first** (emphasis added).

Additionally, the Notice of Termination dated January 3, 2014, informed Employee that she may elect to file an appeal to her termination in **one** of the following ways:

1. You may elect to file a grievance pursuant to the Collective Bargaining Agreement between DCPS and your Union...or
2. You may elect to file an appeal with the D.C. Office of Employee Appeals (OEA).

According to Employee's termination letter and pursuant to the above referenced code, Employee had the option to appeal her termination with either OEA or through her Union, **but not both**. (Emphasis added). Employee elected to appeal her termination by filing a grievance under the CBA between Agency and her local union weeks before she filed his petition for appeal with OEA. And by doing so, Employee waived her rights to be heard by this Office. Therefore, I conclude that this Office does not have jurisdiction over Employee's appeal. And for this reason, I am unable to address the factual merits, if any, of this matter.

ORDER

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

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge