

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JOHNNY LEE GUY,)	
Employee)	
)	OEA Matter No.: J-0084-14
v.)	
)	Date of Issuance: March 29, 2016
DISTRICT OF COLUMBIA)	
DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Johnny Lee Guy (“Employee”) worked as a Pre-Commitment Case Manager with the D.C. Department of Youth Rehabilitation Services (“Agency” or “DYRS”). On September 6, 2013, Agency issued written notice to Employee informing him that he was being separated from his position pursuant to a Reduction-in-Force (“RIF”). The effective date of the termination was October 11, 2013.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on June 10, 2014. In his appeal, Employee argued that Agency failed to properly consider him for

¹ *Petition for Appeal*, (June 10, 2014).

priority re-employment because of his age.² He also contended that Agency retaliated against him because he previously filed a complaint with the Equal Employment Opportunity Commission.³ Employee also stated that he should have been given priority placement based on his status as a Veteran.

Agency filed an Answer to Employee's Petition for Appeal on July 25, 2014. It argued that OEA lacked jurisdiction over Employee's appeal because it was filed more than thirty (30) days after the effective date of the RIF.⁴ In addition, Agency stated that Employee's arguments constituted grievances that were outside of OEA's jurisdiction.⁵

The matter was assigned to an Administrative Judge ("AJ") for adjudication on June 13, 2014. On August 4, 2014, the AJ issued an Order, directing Employee to submit a written brief that addressed the jurisdictional issue.⁶ In his August 18, 2014 brief, Employee argued that OEA has jurisdiction over his appeal pursuant to D.C. Official Code § 1-606.03. Employee stated that he was not challenging the RIF action itself, but instead submitted that Agency failed to afford him priority placement as required under Chapter 24 of the District Personnel Manual ("DPM").⁷ According to Employee, Agency was still in communication with him about possible employment opportunities as of June 3, 2014.⁸ In the alternative, he requested that the AJ place this matter in abeyance, pending the receipt of Agency's final decision on the issue of his priority re-employment eligibility.⁹

² *Id.* at 6.

³ *Id.*

⁴ *Agency's Answer to Employee's Petition for Appeal*, p. 1 (July 25, 2014).

⁵ *Id.*

⁶ *Order* (August 4, 2014).

⁷ *Employee's Brief on Jurisdiction*, p.4 (August 18, 2014).

⁸ *Id.* at 6.

⁹ *Id.*

An Initial Decision (“ID”) was issued on August 25, 2014. The AJ held that Employee failed to meet his burden of proof in establishing jurisdiction before this Office. Specifically, the AJ cited to OEA Rule 604.2, which requires that a Petition for Appeal be filed within thirty (30) days after the effective date of the appealed agency action.¹⁰ According to the AJ, Employee’s appeal was filed approximately eight (8) months after the effective date of the RIF. As a result, Employee’s Petition for Appeal was dismissed for lack of jurisdiction.¹¹

Employee subsequently filed a Petition for Review with OEA’s Board on October 9, 2014. In his petition, Employee reiterates the same arguments presented in his August 18, 2014 Brief on Jurisdiction.¹² He further argues that the AJ’s decision to dismiss his Petition for Appeal was based on an erroneous interpretation of statute and that the ID was not based on substantial evidence. Employee; therefore, requests that this Board reverse the AJ’s decision and find that OEA has jurisdiction over his appeal.¹³

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or

¹⁰ *Initial Decision*, p. 2 (August 25, 2014).

¹¹ *Id.* at 3. The AJ noted that Employee’s claims concerning Agency’s Priority Re-employment Program constituted a post-RIF activity over which OEA lacks jurisdiction. The ID did not address Employee’s substantive arguments.

¹² *Petition for Review* (October 9, 2014).

¹³ Agency did not file an answer to the Petition for Review.

- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

D.C. Official Code § 1-606.03 (2001) provides that: “Any appeal [to this Office] shall be filed within 30 days of the effective date of the appealed agency action.” Pursuant to OEA Rule 628.2, “[t]he 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 provides that “[a]n appeal filed pursuant to Rule 604.1 must be filed within thirty (30) days of the effective date of the appealed agency action. The date of filing shall be the date the Office time stamps on the document.”¹⁴ The D.C. 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.¹⁵ This Office has consistently held that the only exception to this mandatory and jurisdictional timing requirement arises when an agency fails to provide the employee “adequate notice of its decision and the right to contest this decision through an appeal.”¹⁶

In this case, Employee received notice that his position was being abolished pursuant to a RIF on September 6, 2013. Agency’s notice provided that Employee could file a Petition for Appeal with this Office within thirty (30) calendar days of the effective date of the RIF action.¹⁷ However, Employee did not file an appeal with OEA until June 10, 2014. This date is well beyond the jurisdictional time limit as required by OEA Rule 604.2. The record is clear that Employee was given adequate notice of his appeal rights. Thus, the AJ’s determination that OEA lacks jurisdiction over Employee’s appeal is supported by substantial evidence and his decision

¹⁴ OEA Rule 607.3.

¹⁵ See, e.g., *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162 (D.C. 1985).

¹⁶ OEA Rule 605.1; See also *Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, *Opinion and Order on Petition for Review* (June 27, 2008) (citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003)); *Jones v. D.C. Public Schools, Department of Transportation*, OEA Matter No. 1601-0077-09, *Opinion and Order on Petition for Review* (May 23, 2011).

¹⁷ Agency Answer to Petition for Appeal, Exhibit 3 (July 25, 2014).

was not based on an erroneous interpretation of statute.¹⁸ Accordingly, this Board may not address the merits, if any, of Employee's substantive claims. Based on the foregoing, Employee's Petition for Review must be denied.

¹⁸ Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *See Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.