THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
MICHAEL RONEY,	)	
Employee	)	OEA Matter No. 1601-0057-12
	)	
v.	)	
	)	Date of Issuance: May 10, 2016
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF TRANSPORTATION,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Michael Roney ("Employee") worked as a Civil Engineer Technician with the District of Columbia Department of Transportation ("Agency"). On January 10, 2012, Agency removed Employee from his position for "any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law" and "any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include neglect of duty." He appealed to the Office of Employee Appeals ("OEA") on February 3, 2012.[1]

After the parties filed their Petition for Appeal and response with OEA, the

[1] *Petition for Appeal,* p. 5-9 (February 3, 2012).

Administrative Judge ("AJ") held a Status Conference on March 28, 2014.[2] Subsequently, a Post-Status Conference Order was issued requesting that the parties submit briefs addressing whether Agency had cause for the adverse action taken against Employee and if removal was the appropriate penalty. Agency's brief was due on April 25, 2014, and Employee's was due on May 23, 2014.[3]

Agency timely submitted its brief. However, Employee failed to provide a brief by the deadline. Additionally, no motion for an extension was filed by Employee. As a result, the AJ issued a Show Cause Order on June 2, 2014, requesting that Employee submit a good cause statement for failing to submit a response. The order noted that "failure to respond in a timely fashion to this order, or failure to establish good cause for your failure to appear at the Prehearing Conference, may result in the imposition of sanctions pursuant to OEA Rule 621. . . including dismissal of [your] appeal."[4]

On June 12, 2014, the AJ issued his Initial Decision in this matter. He provided that Employee failed to submit his brief and failed to respond to the Show Cause Order. Therefore, in accordance with OEA Rule 621, Employee's appeal was dismissed for failure to prosecute.[5]

Employee filed a Motion to Re-open the matter on March 15, 2016. He argues that he was represented by the President of AFGE Local 1975 at the Status Conference. Employee asserts that he understood that the brief would be filed with OEA by his Representative. However, it was not filed. Employee acknowledges that no Petition for Review was filed with the OEA Board or in Superior Court for the District of Columbia. Thus, the Initial Decision

[2] In his Petition for Appeal, Employee argued that he did not commit any violations as specified in the Agency's decision. *Id.* at 2. Agency filed its Answer to Employee's Petition for Appeal on March 7, 2012. *Agency's Answer to Employee's Petition for Appeal* (March 7, 2012).
[3] *Post-Status Conference Order* (March 31, 2014).
[4] *Show Cause Order* (June 2, 2014).
[5] *Initial Decision* (June 12, 2014).

became final in this matter.[6]

On November 21, 2014, Employee filed a complaint with the Public Employee Relations Board ("PERB"). In his complaint, he alleged that his Representative committed an unfair labor practice and that he was deprived of his right to pursue relief at OEA. The PERB Board found that Employee established the unfair labor practice. Therefore, PERB ordered that the necessary steps be taken to reinstate Employee's appeal before OEA. Accordingly, Employee filed a Motion to Re-open the Matter before OEA.[7]

On March 24, 2016, Agency filed its Answer to Employee's motion. It argues that Employee has essentially filed a Petition for Review which should be dismissed because it is untimely. Moreover, Agency contends that Beins, Axelrod, P.C. did not enter its appearance at OEA as representatives for Employee. Therefore, the firm cannot submit documents on behalf of Employee. Finally, Agency opines that the ruling at PERB has no bearing on the finality of OEA's Initial Decision. As a result, it requests that the Petition for Review be dismissed.[8]

As Agency suggests, this Board does consider Employee's Motion to Re-open as a Petition for Review. D.C. Official Code § 1-606.03(c) provides that ". . . [t]he initial decision of the Hearing Examiner shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period. . . ." Similarly, OEA Rule 632.1 provides that "the initial decision shall become final thirty-five (35) calendar days after issuance." Exceptions to this rule are found in OEA Rule 632.2. This rule states that "the initial decision shall not become final if any party files a petition for review or if the Board reopens the case on its own motion within thirty-five (35) calendar days after issuance of the

[6] *Employee's Motion to Re-open Matter*, p. 2-3 (March 15, 2016).
[7] *Id.*, 3-5.
[8] *Agency's Answer to Petition for Review* (March 24, 2016). Additionally, Agency filed a Motion to Expedite this matter on the Board's docket. *Agency's Motion to Expedite Petition for Review* (March 24, 2016).

initial decision." As Agency provided, because a Petition for Review was not filed within thirty-five calendar days, the Initial Decision became final on July 17, 2014. Therefore, Employee's Petition for Review filed on March 15, 2016, was untimely.

OEA and the D.C. Court of Appeals have consistently held that time limits for filing appeals are mandatory in nature.[9] Specifically, the D.C. Court of Appeals reasoned that because the time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional, it obviates any need for a showing of prejudice.[10] Thus, we must dismiss Employee's Petition for Review.

[9] *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *Alfred Gurley v. D.C. Public Schools,* OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008); *James Davis v. Department of Human Services,* OEA Matter No. 1601-0091-02, *Opinion and Order on Petition for Review* (October 18, 2006); *Damond Smith v. Office of the Chief Financial Officer,* OEA Matter No. J-0063-09, *Opinion and Order on Petition for Review* (December 6, 2010); *Jason Codling v. Office of the Chief Technology Officer,* OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010); and *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).

[10] *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *Zollicoffer v. D.C. Public Schools,* 735 A.2d 944, 945-946 (D.C. 1999); and *Gibson v. Public Employee Relations Board,* 785 A.2d 1238, 1241 (D.C. 2001).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DISMISSED**.

FOR THE BOARD:

_____
Sheree L. Price, Interim 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.