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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
LACHELLE HARDY,	)	
Employee	)	OEA Matter No. J-0058-14
	)	
v.	)	Date of Issuance: April 18, 2014
	)	
OFFICE OF THE STATE	)	
SUPERINTENDENT OF EDUCATION,	)	
Agency	)	
	)	
	)	Arien Cannon, Esq.
	)	Administrative Judge
_____	)	
Lachelle Hardy, Employee, <i>Pro se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

Lachelle Hardy (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on February 27, 2014, challenging the Office of the State Superintendent of Education’s (“Agency” or “OSSE”) decision to terminate her for Absence Without Official Leave. I was assigned this matter on March 7, 2014. An Order on Jurisdiction was issued on March 18, 2014, which required Employee to provide a statement of reason(s) why she believes this Office may exercise jurisdiction over her appeal. Employee filed her response on April 1, 2014. Agency also filed its Answer on April 1, 2014. The record is now closed.

**ISSUE**

Whether OEA may exercise jurisdiction over Employee’s appeal.

**JURISDICTION**

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

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether this Office has jurisdiction over Employee's appeal. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

An employee may appeal [to this Office] 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 [RIF]. . . . *Any appeal shall be filed within 30 days of the effective date of the appealed agency action.*

OEA Rule 604.2 also provides that an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed agency decision.<sup>1</sup> Here, Employee's termination letter, dated January 24, 2014, advised her that she must file her appeal with OEA within thirty (30) calendar days of Agency's final decision.<sup>2</sup> Employee's termination became effective on January 7, 2014. Employee filed her Petition for Appeal with this Office on February 27, 2014.

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he *employee* shall have the burden of proof as to issues of jurisdiction..." The burden of proof is defined under a preponderance of the evidence standard. Preponderance of the evidence means "[t]hat 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."<sup>3</sup>

On March 18, 2014, Employee was ordered to set forth her reasons as to why this Office may exercise jurisdiction over her appeal. Employee filed her response to the Order on Jurisdiction on April 1, 2014. Rather than address the jurisdiction issue, Employee seems to argue the merits of the case and states that Agency's action was not fair. The Amended Notice of Final Decision on Proposed Removal, issued by Agency on January 24, 2014, clearly provides that Employee was entitled to appeal the removal action within thirty (30) days to OEA. Employee filed her appeal on February 27, 2014, beyond the thirty (30) day limit prescribed in D.C. Code § 1-606.03.<sup>4</sup>

This Office has no authority to review issues beyond its jurisdiction. The time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional matters. *See Zollicoffer v. District of Columbia Pub. Sch.*, 735 A.2d 944 (D.C. 1999) (quoting *District of Columbia Pub. Emp. Relations Bd. v. District of Columbia Metro. Police Dep't*, 593 A.2d 641,

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<sup>1</sup> 59 DCR 2129 (March 16, 2012).

<sup>2</sup> The termination letter dated January 24, 2014, is captioned, "Amended Notice of Final Decision on Proposed Removal." Based on the record, it is unclear when the original Notice of Final Decision was issued and what changes were made in the Amended Notice of Final Decision. The effective termination date provided in the Amended Notice is January 7, 2014.

<sup>3</sup> OEA Rule 628.1, 59 DCR 2129 (March 16, 2012).

<sup>4</sup> Despite it being unclear when the original Notice of Final Decision on Proposed Removal was issued, Employee's appeal is still untimely based on Agency's Amended Notice.

643 (D.C. 1991)). A failure to file a notice of appeal within the required time period divests this Office of jurisdiction to consider the appeal. *See Id.* at 946. Because Employee filed her appeal beyond the time limits set forth in OEA Rule 604.2 and D.C. Code § 1-606.03, and has not satisfied her burden of proof as to jurisdiction, this matter must be dismissed.

**ORDER**

Based on the aforementioned, it is **ORDERED** that Employee's Petition for Appeal is hereby **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge