

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:)	
)	
CHARMAINE HICKS,)	
Employee)	
)	OEA Matter No.: J-0008-15
v.)	
)	Date of Issuance: January 24, 2017
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Charmaine Hicks (“Employee”) worked as a Bus Attendant with the Office of the State Superintendent of Education (“Agency”). On November 12, 2013, Agency issued written notice to Employee notifying her that she was being terminated for “any on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations: neglect of duty.” The effective date of her termination was November 12, 2013.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on October 20, 2014. In her appeal, she argued that she should not have terminated because she consistently followed all of Agency’s safety policies and procedures throughout her tenure as a Bus Attendant. In addition, Employee stated that her Petition for Appeal was untimely filed

¹ *Petition for Appeal* (October 20, 2014).

because she recently lost both her mother and father within months of each other. Therefore, she requested that OEA reinstate her with back pay and benefits. Agency did not file an answer to Employee's appeal.²

The matter was assigned to an OEA Administrative Judge ("AJ") on October 31, 2014. On November 6, 2014, the AJ issued an Order, directing Employee to submit a written brief that addressed whether her appeal should be dismissed for lack of jurisdiction because it was filed in an untimely manner.³ In her brief, Employee did not specifically address the jurisdictional issue. However, she reiterated that she was unfairly terminated and that she consistently followed the correct procedures for reporting and handling incidents that occurred on her bus.⁴

An Initial Decision was issued on May 12, 2015. The AJ held that Employee failed to meet her burden of proof in establishing jurisdiction before this Office. Specifically, the AJ cited to OEA Rule 604.2, 59 DCR 2129 (March 16, 2012), which requires that a Petition for Appeal be filed within thirty days after the effective date of the appealed agency action. According to the AJ, Employee's appeal was filed approximately one year after the effective date of Agency's termination action. Consequently, Employee's appeal was dismissed for lack of jurisdiction.⁵

Employee subsequently filed a Petition for Review with OEA's Board on September 14, 2015. In her submission, she restates that overwhelming personal issues prevented her from being able to file an appeal of her termination with OEA in a timely manner. Employee further notes the length of time it took for the AJ to issue an Initial Decision. In addition, she argues that Agency never submitted an answer to her Petition for Appeal or an optional response brief to the

² *Id.*

³ *Jurisdiction Order* (November 6, 2014).

⁴ *Employee Brief* (November 14, 2014).

⁵ *Initial Decision*, p. 3 (May 12, 2015).

jurisdictional order. As a result, Employee requests that this Board grant her Petition for Review and reinstate her to her previous position.⁶

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
- (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.”⁷ 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.⁸ This Office has consistently held that the only exception to this mandatory and jurisdictional timing requirement

⁶ *Petition for Review* (September 14, 2015).

⁷ OEA Rule 607.3.

⁸ *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).

arises when an agency fails to provide the employee “adequate notice of its decision and the right to contest this decision through an appeal.”⁹

In this case, Employee received a Notice of Proposed Removal on October 4, 2013, based on a charge of neglect of duty. On November 12, 2013, Agency issued its Notice of Final Decision on Proposed Removal, sustaining the charge against her. Employee’s termination became effective on November 12, 2013. However, she did not file a Petition for Appeal with this Office until October 20, 2014. This date is well beyond the thirty-day jurisdictional time limit as provided under OEA Rule 604.2. While this Board deeply sympathizes with Employee’s tremendous loss, the time limit for filing Petition for Appeal is mandatory. The record is clear that Agency outlined the deadline for appealing Employee’s termination to OEA in its final notice. Employee did not comply with the jurisdictional time limit for filing a Petition for Appeal. Thus, the AJ’s determination that OEA lacks jurisdiction over Employee’s appeal is supported by substantial evidence.¹⁰ Accordingly, this Board may not address the merits, if any, of Employee’s substantive claims, including Agency’s failure to file an answer to the Petition for Appeal or its failure to file a jurisdictional brief. Based on the foregoing, Employee’s Petition for Review must be denied.

⁹ 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)) and *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).

¹⁰ 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, Interim Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

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.