

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Jeffrey Ramirez)	Matter No. J-0074-11
Employee)	
)	Date of Issuance:
v.)	January 11, 2012
)	
D.C. Metropolitan Police Department)	Senior Administrative Judge
Agency)	Joseph E. Lim, Esq.
)	
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Teresa Q. Hyden, Esq., Agency Representative		
Jeffrey Ramirez, Employee <i>pro se</i>		

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

On February 25, 2011, Employee, a police officer pay grade 5, filed an appeal with this Office contesting Agency’s 15-day suspension (5 days held in abeyance) of Employee from his position. By order issued on April 21, 2011, Employee was ordered to respond to Agency’s motion to dismiss for lack of jurisdiction. Agency alleges that Employee’s appeal was untimely. Employee has not responded. The record is closed.

ISSUE

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

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

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 629.2, 46 D.C. Reg. 9297, states, “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” The only exception to the 30-day appellate rule would be a situation where an agency neglected to provide an employee with the proper appeal rights notification. Employee did not deny that he was provided the proper appellate rights notifications, including notification that he must file his appeal with the Office within 30 days of the effective date of Agency’s action.

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 608.3, Filing Requirements, states: “The date of filing shall be determined by the date of receipt by the Office.”

I also take administrative notices of some relevant language from selected court cases. “The starting point in every case involving construction of a statute is the language itself.” *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). “A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language.” *Caminetti v. United States*, 242 U.S. 470 (1916); *McCord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), __ D.C. Reg. __ (). Further, “[t]he time limits for filing with administrative adjudicatory agencies, as with the courts, are mandatory and jurisdictional matters.” *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); *White v. D.C. Fire Department*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (September 2, 1994), __ D.C. Reg. __ ().

Here, it is undisputed that Employee received that his final notice of adverse action on December 17, 2010. According to the Agency, Employee has not yet served his suspension. It is undisputed that Employee filed his appeal with the Office on February 25, 2011. In addition, in violation of my order, Employee has failed to respond to Agency’s motion to dismiss.

Regarding documents, OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999), states, “If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to . . . b) Submit required documents after being provided with a deadline for such submission.”

I find that under the rules of this Office, a failure to submit required documents after being directed to do so, and when provided with a deadline for such submission, could result in sanctions, including dismissal. Therefore, I further conclude that Employee failed to prosecute his appeal, which is a sound cause for this matter to be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge