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

_____	)	
In the Matter of:	)	
	)	
RAYMOND WEDGE,	)	
Employee	)	OEA Matter No. J-0021-11
	)	
v.	)	Date of Issuance: January 3, 2011
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
Richard Rush, Employee’s Representative	)	
Bobbie L. Hoye, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On August 19, 2009, Raymond Wedge (“Employee”) filed a petition for appeal (OEA Matter No. 2401-0212-09) with the Office of Employee Appeals (“OEA”) contesting the D.C. Public Schools (“Agency”) decision abolishing his job through a Reduction-in-Force (“RIF”). Employee’s mailing address on this petition was listed as “3913 92nd Avenue, Springdale, MD 20774.” On October 1, 2009, Agency filed an answer in this matter with the OEA and mailed a copy to Employee at the above listed address. The matter was assigned to Senior Administrative Judge (“AJ”) Rohulamin Quander who issued an Order on October 6, 2010, convening a status conference for November 2, 2010, at 10:00a.m. A copy of the Order was mailed to Agency and to Employee at the above referenced mailing address. The Order also advised Employee that a failure to attend may result in the AJ imposing sanctions, including a possible dismissal of the appeal, or ruling in favor of the Agency. Despite this warning, Employee failed to appear for the conference. On November 4, 2010, Senior AJ Rohulamin Quander issued an Initial Decision dismissing Employee’s appeal for failure to prosecute. The Initial Decision was mailed to Employee at the above listed mailing address.

On November 15, 2010, upon receiving the AJ’s Initial Decision, Employee filed this petition for appeal with the OEA requesting that the OEA “reschedule a court date because one was never received.” Additionally, attached to Employee’s appeal was a ‘Notice of “ineffective” IMPACT Rating and Termination’ issued to Employee on July 23, 2010, by Agency. This letter

terminated Employee's position with the Agency effective July, 30, 2010. Agency filed its answer to the November 15, 2010, appeal on December 16, 2010 requesting the appeal be dismissed for lack of jurisdiction and failure to state a claim. The matter was assigned to me on December 20, 2010. After considering the parties' position in both matters (OEA 2401-0212-09 and J-0021-11), I decided that an evidentiary hearing was unwarranted in this matter. This record is now closed.

### JURISDICTION

This office does not have jurisdiction in this matter.

### ISSUE

Whether this appeal should be dismissed as moot.

### ANALYSIS AND CONCLUSION

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) provides as follows:

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:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

As a result of Employee's failure to attend the status conference, the AJ in the previous OEA appeal was justified in issuing an initial decision dismissing Employee's appeal for failure to prosecute.

Employee contends that his failure to appear for the November 02, 2010 status conference was because he did not receive the Order convening the status conference. Because the facts and allegations in this matter originates from Employee's previous appeal (OEA Matter No. 2401-0212-09), this matter is considered moot in light of the fact that it had already been litigated and an Initial Decision rendered on November 04, 2010.

However, pursuant to OEA Rule § 631.1, the AJ may reopen the record to receive further evidence or argument at any time prior to the issuance of the initial decision. By requesting that the court date be rescheduled, Employee is essentially demanding that his record be reopened. Nonetheless, his request was received after the AJ issued his initial decision. Thus, the AJ cannot reopen this record to receive further evidence or argument. And as such, the AJ no longer has jurisdiction in this matter.

Employee may have a valid argument to have his appeal reopened; however, filing a new “petition to appeal” after the Initial Decision has been issued is not the right course of action. Once the AJ has issued the Initial Decision, OEA Rule § 634.1 provides that any party to the proceeding may serve and file a **petition for review** of an initial decision with the Board within (35) thirty-five calendar days of issuance of the initial decision. Thus, the correct course of action to take was to file a petition for review. Employee had (35) thirty-five days from the date of the AJ’s November 4, 2010 decision to file a petition for review to have the matter reopened and further evidence/arguments admitted. Thus, the petition for review should have been filed no later than December 9, 2010. Nonetheless, Employee has the option of filing a petition for review (35) thirty-five days from the date of this decision.

On another note, while it is unclear as to why Employee attached the ‘Notice of “ineffective” IMPACT Rating and Termination’ he received on July 23, 2010, from Agency while at the same time requesting to have the court date from his prior OEA Matter (RIF issues) rescheduled, any claims stemming from the above referenced notice will be dismissed as being untimely. In accordance with DC Official Code 1-606.03, a “District government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within 30 calendar days of the effective date of action being appealed.” Employee received the ‘Notice of “ineffective” IMPACT Rating and Termination’ on July 23, 2010 and did not file this appeal until November 15, 2010. I find that this is outside the statutory window of (30) thirty days required to bring any cause of action with the OEA.

#### ORDER

It is hereby **ORDERED** that the petition for appeal in this matter is **DISMISSED**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge