

Notice: This decision is subject to formal revision before publication in the District of Columbia Register. Parties are requested to notify the Office Manager of any formal errors in order that corrections be made prior to publication. This is not intended to provide an opportunity of a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
RAY BROOKS,	)	
Employee	)	OEA Matter No.: J-0010-14
	)	
v.	)	Date of Issuance: December 23, 2013
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
Ray Brooks, Employee, <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On October 24, 2013, Ray Brooks (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Public Schools’ (“Agency”) decision to abolish her position through a Reduction-In-Force (“RIF”), effective August 16, 2013. At the time her position was abolished, Employee was a Clerk at Miner Elementary School (“Miner”).

I was assigned this matter on October 29, 2013. On November 25, 2013, Agency filed its Answer to Employee’s Petition for Appeal requesting that the appeal be dismissed for lack of jurisdiction. Thereafter, on December 2, 2013, I issued an Order requiring Employee to submit a written brief addressing the jurisdiction issue in this matter by December 11, 2013. Agency was also given the option to file a reply to Employee’s jurisdiction brief on or before December 18, 2013, if it chose to do so. While Employee submitted a timely response to this Order, Agency did not submit a reply to Employee’s brief on jurisdiction. The record is now closed.

**JURISDICTION**

The jurisdiction of this Office, pursuant to D.C. Official Code, § 1-606.03 (2001), has not been established.

## ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

## ANALYSIS AND CONCLUSION

Agency highlights in its Answer that OEA lacks jurisdiction in this matter since Employee filed her appeal with this Office more than thirty (30) days from the effective date of her termination. In her December 11, 2013, brief, Employee listed several personal reasons why she failed to timely file her Petition for Appeal with this Office. This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1<sup>1</sup>, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[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." This Office has no authority to review issues beyond its jurisdiction.<sup>2</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>3</sup>

A "[d]istrict government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within thirty (30) calendar days of the effective date of the action being appealed."<sup>4</sup> The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.<sup>5</sup> Also, while this Office has held that the statutory thirty (30) days time limit for filing an appeal in this Office is mandatory and jurisdictional in nature,<sup>6</sup> there is an

---

<sup>1</sup> See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

<sup>2</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>3</sup> See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

<sup>4</sup> DC Official Code §1-606.03.

<sup>5</sup> See, e.g., *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).

<sup>6</sup> *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

exception whereby, a late filing will be excused if an agency fails to provide the employee with “adequate notice of its decision and the right to contest the decision through an appeal.”<sup>7</sup>

Here, according to the record, Employee’s termination was effective August 16, 2013, and Employee filed her appeal with this Office on October 24, 2013. Because Employee’s termination effective date was August 16, 2013, Employee had thirty (30) days from that date to file an appeal with OEA. She filed her appeal on October 24, 2013, approximately sixty-nine (69) days from the termination effective date. According to the Final Agency Decision in this matter, Agency complied with OEA Rule 605.1<sup>8</sup> when it terminated Employee, and as such, Employee’s untimely Petition for Appeal does not fall within the exception to the thirty (30) days mandatory filing requirement. Moreover, Employee’s reasons for her failure to timely file her Petition for Appeal with this Office do not fall within the exception to the thirty (30) days mandatory filing requirement listed above. Therefore, I conclude that this Office does not have jurisdiction over Employee’s appeal. And for this reason, I am unable to address the factual merits, if any, of this matter.

### **ORDER**

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

FOR THE OFFICE:

---

MONICA DOHNJI, Esq.  
Administrative Judge

---

<sup>7</sup> 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); *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).

<sup>8</sup> 59 DCR 2129 (March 16, 2012).