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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
WARDELL CROCKETT,)	
Employee)	OEA Matter No. J-0064-12
)	
v.)	Date of Issuance: April 23, 2012
)	
DEPARTMENT OF PUBLIC WORKS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Wardell Crockett, Employee, <i>pro se</i>)	
Andrea Comentale, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On February 22, 2012, Wardell Crockett (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the Department of Public Works’ (“Agency”) decision to terminate him. At the time of his termination, Employee was a Motor Vehicle Operator. Employee was terminated for violating section 1608 of Chapter 16 of the regulations - “[a]ny on-duty or Employment-related act or omission that the Employee knew or should reasonably have known in a violation of law: Assault with Intent to Kill while Armed.”¹ The effective date of Employee’s termination was October 3, 2010. The Notice included Employee’s appeal rights with OEA, along with copies of OEA appeal forms and regulations.² The Notice was mailed to Employee on September 21, 2010, via certified mail. Agency was notified on February 23, 2012, of Employee’s petition for appeal and on March 26, 2012, Agency filed its Answer to Employee’s appeal.

This matter was assigned to me on or about March 26, 2012. Thereafter, on April 3, 2012, Employee submitted additional documents in support of his petition for appeal. Because this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is closed.

¹ Notice of Final Decision on Proposed Removal (September 20, 2010).

² *Id.*

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

The threshold issue in this matter is one of jurisdiction. 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") § 604.1³, 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.⁴ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.⁵

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."⁶ 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

³ See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

⁴ See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

⁵ See *Brown v. District of Columbia Pub. Sch.*, 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).

⁶ DC Official Code 1-606.03.

Office is mandatory and jurisdictional in nature.⁷ 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,⁸ there is an 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.”⁹

Here, Employee’s termination was effective October 3, 2010. The Notice of Employee’s termination was mailed to him via certified mail on September 21, 2010. Both Agency and Employee submitted a copy of the certificate of mailed correspondence dated September 21, 2010.¹⁰ Employee had thirty (30) days from October 3, 2010, to file an appeal with OEA, but failed to do so. He filed his appeal on February 22, 2012, approximately 504 days from the termination effective date. Because Agency complied with OEA Rule 605.1, 59 DCR 2129 (March 16, 2012), when it terminated Employee, Employee’s appeal is untimely and does not fall within the exception to the mandatory thirty (30) days limit for filing an appeal with OEA. 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

It is hereby **ORDERED** that Employee’s Petition is **DISMISSED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁷ 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).

⁸ *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

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); *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 See Employee’s petition for appeal and Agency’s Answer, Tab 13.