

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:	)	
	)	
MICHAEL GAMBOA,	)	
Employee	)	
	)	OEA Matter No.: J-0082-14
v.	)	
	)	Date of Issuance: May 10, 2016
DEPARTMENT OF YOUTH	)	
REHABILITATION SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Michael Gamboa (“Employee”) worked as a Youth Family Team Lead Coordinator with the Department of Youth Rehabilitation Services (“DYRS”). On September 6, 2013, Agency issued a written notice to Employee informing him that he was being separated from his position pursuant to a Reduction-in-Force (“RIF”). The effective date of his termination was October 11, 2013.<sup>1</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on June 6, 2014. In his appeal, Employee argued that he should have been offered a comparable

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<sup>1</sup> *Petition for Appeal* (June 6, 2014).

position after being notified of the RIF. Employee also contended that Agency discriminated against him because of his age and his disability.<sup>2</sup>

The matter was assigned to an Administrative Judge (“AJ”) for adjudication on June 13, 2014. On June 20, 2014, the AJ issued an Order directing Employee to submit a written brief addressing whether his appeal should be dismissed for lack of jurisdiction.<sup>3</sup> Employee submitted a Memorandum in Support of Jurisdiction on July 8, 2014. He argued that OEA has jurisdiction over the instant appeal pursuant to D.C. Official Code § 1-606.03. Employee stated that he was not challenging the RIF action itself, but he instead submitted that Agency failed to afford him priority placement as required under Chapter 24 of the District Personnel Manual (“DPM”).<sup>4</sup>

An Initial Decision (“ID”) was issued on November 10, 2014. The AJ held that Employee failed to meet his burden of proof in establishing jurisdiction before this Office. Specifically, the AJ cited to OEA Rule 604.2, which requires that a Petition for Appeal be filed within thirty days after the effective date of the appealed agency action.<sup>5</sup> According to the AJ, Employee’s appeal was filed approximately nine months after the effective date of the RIF. As a result, Employee’s Petition for Appeal was dismissed for lack of jurisdiction.<sup>6</sup>

Employee subsequently filed a Petition for Review on December 17, 2014. In his petition, he reiterates the same arguments that were presented in his July 8, 2014 Memorandum in Support of Jurisdiction. He asks the Board to grant his Petition for Review so that it can be remanded to the AJ for adjudication on the substantive arguments.<sup>7</sup>

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<sup>2</sup> *Id.*, Attachment A.

<sup>3</sup> *Order Requesting Briefs* (June 20, 2014). Agency filed a Motion for Extension of Time to file its Answer to the Petition for Appeal on July 9, 2014. However, Agency did not file an answer prior to the issuance of the AJ’s Initial Decision. It should be noted that OEA Rule 608.2 required Agency to file an answer within thirty (30) calendar days of the service of the Petition for Appeal.

<sup>4</sup> *Memorandum in Support of Jurisdiction*, p. 4 (July 8, 2014).

<sup>5</sup> *Initial Decision*, p. 2 (August 25, 2014).

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Petition for Review*, p. 9 (December 17, 2014).

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.”<sup>8</sup> 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.<sup>9</sup> This Office has consistently held that the only exception to this mandatory and jurisdictional timing requirement

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<sup>8</sup> OEA Rule 607.3.

<sup>9</sup> See *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 with “adequate notice of its decision and the right to contest this decision through an appeal.”<sup>10</sup>

In this case, Employee received notice that his position was being abolished pursuant to a RIF on September 6, 2013. Agency’s notice provided that Employee could file a Petition for Appeal with this Office within thirty calendar days of the effective date of the RIF action.<sup>11</sup> However, Employee did not file an appeal with OEA until June 6, 2014. This date is well beyond the jurisdictional time limit as required by OEA Rule 604.2. The record is clear that Employee was given adequate notice of his appeal rights. Therefore, the AJ’s determination that OEA lacks jurisdiction over Employee’s appeal is supported by substantial evidence.<sup>12</sup> Accordingly, this Board may not address the merits, if any, of Employee’s substantive claims. Based on the foregoing, Employee’s Petition for Review must be denied.

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<sup>10</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)) 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).

<sup>11</sup> *Petition for Appeal* (June 6, 2014).

<sup>12</sup> 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) and *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:

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Sheree L. Price, Interim Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

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.