THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JAMES NYANFORE,	)	
Employee	)	OEA Matter No. J-0018-18
	)	
v.	)	Date of Issuance: March 27, 2018
	)	
OFFICE OF THE STATE	)	
SUPERINTENDENT OF EDUCATION,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

James Nyanfore, Employee, *Pro Se*
Hillary Hoffman-Peak, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 13, 2017, James Nyanfore ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the Office of the State Superintendent of Education's ("Agency") decision to terminate him from his position as a Bus Attendant, effective February 22, 2012.[1] Thereafter, Agency filed a Motion to Dismiss Employee's Petition for Appeal for lack of jurisdiction.

I was assigned this matter on January 16, 2018. Subsequently, on January 18, 2017, the undersigned Administrative Judge ("AJ") issued an Order requiring Employee to address the jurisdiction issue in this matter no later than January 31, 2018. Agency was also afforded the option to submit a reply brief no later than February 12, 2018. On January 29, 2018, Employee requested a two (2) months extension to seek legal help. Employee's request for a two (2) months extension was denied in part, in an Order dated January 31, 2018. The undersigned AJ granted Employee a thirty (30) days extension to seek legal counsel. Employee had until March 2, 2018, to submit his brief on jurisdiction, and Agency also had an option to file a reply to Employee's brief on or before March 16, 2018. While Employee submitted a timely brief, as of

[1] Employee attached a final Agency Notice dated February 22, 2012, along with his Petition for Appeal submitted to OEA.

the date of this decision, Agency has not submitted the optional reply brief. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

JURISDICTION

As will be discussed below, the jurisdiction of this office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That 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.

OEA Rule 628.2 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction

ANALYSIS AND CONCLUSIONS OF LAW

In its Motion to Dismiss, Agency highlights that OEA lacks jurisdiction in this matter because Employee is trying to appeal his salary. Specifically, Agency notes that Employee's claim is that his 2010 and 2012 Notification of Personnel Actions was incorrect and thus, his grade and step is not correct. Agency explains that this is not an action over which OEA has jurisdiction.[2] Agency also argues that, assuming OEA has jurisdiction over this matter, Employee's appeal is late as it was filed more than thirty (30) days from the effective date of the appealed Agency action.

Employee asserts in his reply to the Jurisdiction Order that OEA has jurisdiction over his appeal because OEA had jurisdiction in originally approving the settlement agreement signed by the parties. Employee further explains that in "submitting myself to the settlement before OEA, I had trusted in and relied on the OEA's power to enforce the settlement, in the absence of which power any settlement before the OEA would fail to be binding, and could lead to a failure of trust in the OEA and in its ability to exercise the power it has in settling cases."[3] Employee

[2] *See* Agency's Motion to Dismiss Employee's Petition for Appeal for Lack of Jurisdiction (January 11, 2018).
[3] *See* Jurisdictional Basis of the Motion to Enforce (March 1, 2018).

further states that his petition to enforce the Settlement Agreement is not late. He explains that he made every effort from 2012 to 2016 to resolve the disputes he had with Agency before filing with OEA. And his filing was made promptly after he sought legal advice for his complex and unique situation.[4]

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 Title 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[5], 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; or
(d) Placement on enforced leave for 10 days or more.

As previously noted, 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.[6] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[7]

Here, according to the final agency action submitted by Employee with his Petition for Appeal, the adverse action occurred in 2012. Employee was removed from his position as a Bus Attendant effective February 22, 2012. Therefore, Employee had thirty (30) days from February 22, 2012 to file an appeal with OEA. It appears that Employee did file an Appeal with OEA on March 6, 2012 and an Initial Decision ("ID") was issued in this matter on July 2, 2012.[8] The

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[4] *Id.*
[5] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[6] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[7] *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 General Hospital*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).
[8] *See Nyanfore v. OSSE*, OEA Matter Number. 1601-0073-12 (July 2, 2012); *See also Nyanfore v. OSSE*, OEA Matter No. J-0020-16 (April 25, 2016); and *Nyanfore v. OSSE*, OEA Matter Number. 1601-0073-12C16 (May 16, 2016).

Administrative Judge assigned to the previous matter issued an ID dismissing the matter with prejudice based on the fact that the parties reached a settlement during mediation.[9]

Because both the 2012 Petition for Appeal and the current Petition for Appeal stem from the same cause of action, I find that this matter became final on July 2, 2012, and therefore, OEA lacks jurisdiction over the current appeal. The parties executed a settlement agreement after the mediation conference in 2012 and the executed settlement agreement was submitted to the previous AJ prior to his issuance of the July 2, 2012 ID. Moreover, Employee acknowledges in his March 1, 2018 submission to this Office that the parties signed a settlement agreement in 2012, which he is now seeking its enforcement by OEA. D.C. Official Code §1-606.06(b) (2001) states in pertinent part that:

> If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the [Administrative Judge] shall dismiss the appeal with prejudice.

Thus, I find that pursuant to D.C. Official Code §1-606.06(b) (2001), the 2012 Agreement, which was signed by the parties, constituted the final and binding resolution of the appeal and the previous Administrative Judge rightfully dismissed the matter based on the settlement agreement. Further, because the settlement agreement is a private contract between Employee and Agency, this Office does not have the authority to enforce the terms of the contract or adjudicate issues arising out of such contracts. Accordingly, I conclude that this Office does not have jurisdiction over Employee's current appeal since the matter had already been resolved.

Moreover, based on the record, Employee is appealing Agency's noncompliance with the terms of their 2012 settlement agreement. This does not relate to a performance rating that resulted in removal; it is not an adverse action for cause that has resulted in removal, reduction in grade, suspension for ten (10) or more days; it is not a reduction-in-force; and it is not considered enforced leave for ten (10) days or more. Therefore, I further conclude that this Office does not have jurisdiction over this matter.

Furthermore, assuming that this Office has jurisdiction over this appeal, 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."[10] 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.[11] Also, while this Office has held that the statutory thirty (30) day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature,[12] there is

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[9] *Id.*
[10] DC Official Code §1-606.03.
[11] *See, e.g., Rebecca C. Barnes v. Office of Employee Appeals and District of Columbia Public schools, No. 12-CV-0892 (June 13, 2017);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).
[12] *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999).

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."[13]

Here, according to Employee's submissions to this Office, Employee's termination was effective on February 22, 2012. Therefore, Employee had thirty (30) days from February 22, 2012, to file an appeal with OEA. A review of the February 22, 2012, Notice of Final Decision corroborates that Employee was notified of his appeal rights to this Office. Employee does not contest that he received a copy of the OEA appeal forms and OEA regulations, in compliance with OEA Rule 605. The Notice also informed Employee that he had thirty (30) days from the date of the Notice to file an appeal with this Office. Clearly, Employee was aware of OEA's jurisdiction over this matter, as well as the rules governing appeals in this Office. Additionally, because Employee was aware of his appeal rights with this Office, as well as the mandatory thirty (30) day time limit for filing an appeal in this Office, I find that Employee's Petition for Appeal is untimely. Employee was terminated effective February 22, 2012, and he did not file his appeal until December 17, 2017, approximately five (5) years, ten (10) months from the termination effective date. According to the February 22, 2012, Notice, Agency complied with OEA Rule 605.1 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. Therefore, I conclude that this Office does not have jurisdiction over Employee's appeal.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 628.2.[14] Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 628.1, *id*, as that "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." Based on the foregoing, I find that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear his claims. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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MONICA DOHNJI, ESQ.
SENIOR ADMINISTRATIVE JUDGE

[13] OEA Rule 605.1, 59 DCR 2129 (March 16, 2012); 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).
[14] 59 DCR 2129 (March 16, 2012).