

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of: )  
DELORES JUNIOUS ) OEA Matter No. 1601-0030-09  
Employee )  
 ) Date of Issuance: May 8, 2009  
 )  
v. ) Sheryl Sears, Esq.  
 ) Administrative Judge  
D.C. CHILD AND FAMILY )  
SERVICES AGENCY )  
Agency )

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Dolores Junious, Employee, *Pro Se*  
Andrea Comentale, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND FINDINGS OF FACT

Delores Junious (Employee) was a Social Worker. By letter dated July 30, 2008, Melva Meade, Supervisory Social Worker, notified Employee of a proposal to remove her for “excessive unapproved absences with no documentation to substantiate the need for leave.” Ms. Meade specified that Employee failed to maintain regular attendance at work from July, 2006 until October, 2006 and from May 27, 2008 until July 24, 2008. She also noted that Employee was absent from work from July 28 – 31, 2008. Meade stated that Employee had been on leave restriction.

According to Agency, Employee missed the deadline for requesting a hearing. Later, she was granted a hearing anyway. Employee did not appear for the proceeding which was scheduled for August 29, 2008. By letter dated September 8, 2008, Sandra Jackson, Acting Deputy Director of Agency’s Program Operations Administration, notified Employee that she would be removed effective on that date.

Employee filed an appeal with the Office of Employee Appeals (“the Office”) on November 8, 2008. By order issued on April 14, 2009, Employee was ordered to submit, in writing, a statement of the reasons why her appeal should not be dismissed for untimely filing. By order issued on April 14, 2009, this Judge directed Employee to

submit, in writing, a statement of the reasons why her appeal should not be dismissed for untimely filing. The deadline for that submission was April 30, 2009.

On May 5, 2009, this Judge determined that the submission had been made and issued an order closing the record. On May 6, 2009, this Judge received, in an interoffice mailbox, Employee's "Response to Order to Show Cause." According to the date stamp, it was submitted to this Office on April 30, 2009. This Judge reopened the record to receive it. The record is now closed

### JURISDICTION

For reasons that will be detailed below, this Office does not have jurisdiction over Employee's appeal.

### ISSUES

Whether this appeal should be dismissed for untimely filing.

### BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that [t]he employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." Employee has the burden of proving that this Office has jurisdiction over her appeal.

### ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) lists those actions that employees of the District of Columbia government may appeal to this Office. Section 101(d) of OPRAA amended § 1-606.03 of the Code to provide for jurisdiction as follows:

- (a) An employee may appeal a final agency decision effecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in *removal*, reduction in grade, or suspension for 10 days or more . . . or a reduction in force. Emphasis added.

However, there is a statutory requirement for the timely filing of an appeal. "Any appeal shall be filed within 30 days of the effective date of the appealed agency action." D.C. Official Code § 1-606.3 (a); *see also* OEA Rule 604.2, 46 D.C. Reg. 9297 (1999). In accordance with the statute, the deadline for filing is mandatory and cannot be waived.

In her response to the Judge's order to show cause why her appeal should not be dismissed as untimely, Employee stated that she did not receive the Notice of Final Decision dated September 8, 2008. However, according to a letter from the United States Postal Service (USPS) responding to a request for delivery information, Employee signed

for the document on September 23, 2008 at 2:59 PM. USPS matched the record of Employee's signature with the Item Number assigned to the letter for delivery to get this information. The record contains Employee's signed receipt. Thus, this Judge finds as a fact that Employee received the letter on September 23, 2008. However, she still did not file an appeal until November 8, 2008. Even counting from the date she received the notice, Employee's filing was late.

Employee also contends that she was not notified of her right to appeal to this Office. However, the "Notice of Final Decision on Proposal to Remove" issued by Sandra Jackson, Acting Deputy Director, Program Operations Administration, includes this paragraph:

You have the right to grieve this action through the negotiated grievance procedure in accordance with the Negotiated Agreement or appeal this action to the Office of Employee Appeals (OEA), but not both, within fifteen (15) working days of the effective date of this action.<sup>1</sup>

This Judge finds that Employee was notified of her right to appeal but did not exercise it in a timely fashion. Therefore, this Judge concludes that the Office does not have jurisdiction over her appeal and it must be dismissed.

#### ORDER

It is hereby ORDERED that this petition for appeal is dismissed for lack of jurisdiction.

FOR THE OFFICE:

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SHERYL SEARS, ESQ.  
ADMINISTRATIVE JUDGE

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<sup>1</sup> Agency erred in advising Employee that she had only 15 days to file with the Office of Employee Appeals. However, there is no basis for concluding that this misinformation misled Employee into filing well beyond the thirty (30) deadline.