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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MARIA TURCIOS,)	
Employee)	OEA Matter No. J-0103-11
)	
v.)	Date of Issuance: October 5, 2011
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, Esq.
_____)	Administrative Judge
Maria Turcios, Employee <i>Pro-Se</i>		
Bobbie Hoye, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

By letter dated December 2, 2009, (hereinafter "Removal Notice") the District of Columbia Public Schools (hereinafter "the Agency") issued its final notice to Maria Turcios (hereinafter "Employee") informing her that her position as a Clerk was being abolished pursuant to a Reduction in Force ("RIF"). According to this letter, the effective date of the RIF was January 2, 2010. On April 27, 2011, Employee filed a petition for appeal with the Office of Employee Appeals (hereinafter "OEA" or "the Office") contesting this RIF. I was assigned this matter on or about July 19, 2011. Because there was a question as to whether this Office may exercise jurisdiction over the Employee's appeal, I ordered Employee to submit a written brief addressing the jurisdiction of this Office. The date for responding to this order has since passed. Furthermore, Employee has not complied with this order. After carefully reviewing the documents of record, I have determined that no further proceedings are warranted in this matter. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.2, *id.*, states that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.”

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”) modified certain sections of the Comprehensive Merit Personnel Act (“CMPA”) pertaining to this Office. Of specific relevance to this matter is § 101(d) of OPRAA, which amended § 1-606.3(a) of the Code (§ 603(a) of the CMPA) in pertinent part as follows: “Any appeal [to this Office] shall be filed within 30 days of the effective date of the appealed agency action.”

“The starting point in every case involving construction of a statute is the language itself.” *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). “A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language.” *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), _ D.C. Reg. __ (). Further, “[t]he time limits for filing with administrative adjudicatory agencies, as with the courts, are mandatory and jurisdictional matters.” *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); *White v. D.C. Fire Department*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (September 2, 1994), _ D.C. Reg. __ ().

As was stated previously, OPRAA “clearly and unambiguously” removed appeals filed more than 30 days after the effective date of the action being appealed from the jurisdiction of this Office. “Further, the 30-day filing deadline is statutory and cannot be waived.” *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999), __ D.C. Reg. ().

As was mentioned previously, the Employee was removed from service with an effective date of January 2, 2010. Yet, she filed her petition for appeal on April 27, 2011. This was well past the 30 day filing deadline discussed *supra*. Based on the foregoing, I find that the Employee

has not established that this Office has jurisdiction over this matter. Because of the Employee's failure to timely file her petition for appeal with the OEA¹, I conclude that I must dismiss this matter for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge

¹ Since the Employee failed to establish the jurisdiction of this Office in this matter, I am unable to address the factual merits (if any) of Employee's petition for appeal.