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THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of: )  
)  
RONALD MCLEOD )  
Employee )  
)  
v. )  
)  
D.C. PUBLIC SCHOOLS )  
Agency )  
)

OEA Matter No.: J-0024-00  
Date of Issuance: October 18, 2006

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EMPLOYEE APPEALS

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Ronald McLeod ("Employee") was the Deputy Director of Facilities, Operations and Maintenance for the D.C. Public Schools ("Agency"). On November 4, 1998 an Associate Superintendent for Agency gave to Employee a letter that stated he was to be terminated based on the charges of insubordination and inefficiency. The letter went on to state the following:

Within five (5) school days of your receipt of this notice, you have the right to review any documents supportive of the charges, to reply in writing or in person to all the charges and to furnish any statements in support of your reply. You may submit a written answer within fourteen

(14) days of the receipt of the proposed notice of adverse action. In addition, you may respond either orally or in writing, within fourteen (14) days of the receipt of the notice.

Your request to review the documents, to reply in person or to submit a written reply and statement supporting your reply must be directed to [the Associate Superintendent]. You may also submit a written answer to this proposed notice of adverse action to me.

If it is determined that the proposed adverse action shall be implemented, then you have ten (10) days after receipt of the notice of adverse action to file an appeal to the Superintendent. If no appeal is filed, then this will be the final agency action. Thereafter, you may file an appeal with the Office of Employee Appeals . . . within fifteen (15) days of the effective date of the action.

The last day for which Employee received pay was November 20, 1998. On November 21, 1998 Employee filed with Agency a written response that addressed the charges brought against him. In February 1999 Employee hired an attorney. Thereafter, on April 6, 1999 Employee's attorney sent a letter to Agency requesting that it respond to Employee's November 21, 1998 letter. On April 20, 1999 Employee's attorney sent another letter to Agency. In this letter he delineated the issues that he wished to be discussed at an upcoming meeting and he asked Agency to clarify Employee's employment status.

On April 22, 1999 Agency wrote a letter to Employee in response to his April 20, 1999 letter. In its letter Agency stated that the sole purpose of the upcoming meeting would be to allow Employee to review the documents that supported the charges brought against him. Agency went on to state that it was not obligated to respond to Employee's November 21, 1998 written statement and that as far as it was concerned, the proposed

notice of termination took effect when Employee failed to avail himself of the appeal process as outlined in the November 4, 1998 letter.

Nearly two weeks later, on May 3, 1999, Employee received a letter from Agency's Associate Superintendent. The Associate Superintendent wrote that "[t]his letter shall serve as confirmation that your proposed letter of termination from your position as Deputy Director of Facilities was final on November 20, 1998." (ID at 6) Employee's attorney responded to this letter by sending another letter to the Associate Superintendent dated May 10, 1999. This particular letter proposed settlement terms. In a letter dated May 17, 1999 the Associate Superintendent rejected Employee's proposal and advised him that any further correspondence was to be sent to Agency's General Counsel.

On May 28, 1999 Employee's attorney sent a letter to Agency's General Counsel. On July 21, 1999 the General Counsel responded by letter and stated therein that Agency's final position was that Employee was notified on November 4, 1998 of Agency's proposal to terminate his employment. She went on to state that the May 3, 1999 letter confirmed the fact that the termination took effect November 20, 1998. The letter concluded by stating that Employee's proposed settlement terms were not acceptable.

Finally, on November 29, 1999 Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). Because Employee's appeal appeared to be untimely, the question arose as to whether OEA had jurisdiction to consider it. According to the applicable statute, Employee had 30 days from the effective date of the removal action to appeal that action to this Office. If Employee could show that he had timely filed his appeal then he would have also proven that OEA had jurisdiction to

consider his appeal. To resolve the jurisdictional issue it was necessary for the Administrative Judge to determine when Agency notified Employee that it proposed to terminate him and when it made its final decision in this regard.

A review of the entire record, including the various letters written by Agency, Employee, and Employee's attorney, convinced the Administrative Judge that Agency's November 4, 1998 letter to Employee was its proposed notice to remove him. Moreover, the Administrative Judge found that Agency's July 21, 1999 letter to Employee, wherein Agency's General Counsel wrote that she was stating Agency's final position, served as Agency's final notice that Employee had in fact been terminated. Thus, in an Initial Decision issued May 5, 2003, the Administrative Judge wrote that while the November 4, 1998 letter was "not a model of precision, [it] adequately notified Employee that [Agency] proposed to remove him . . . ."<sup>1</sup> With respect to the July 21, 1999 letter the Administrative Judge stated that although it too was "not a model of precision, [it] gave Employee notice that Agency's decision to remove him was final."<sup>2</sup> Therefore, the Administrative Judge concluded that Employee had not met his burden of proving that OEA had jurisdiction over his appeal and, as a result, dismissed the appeal.

Employee filed a Petition for Review with the Board on June 9, 2003. Employee argues that because Agency's letters which notified him of the removal action were not clear to him, the 30-day filing deadline should not be imposed. We disagree. The Administrative Judge began her analysis of this issue by noting that the District of Columbia Court of Appeals has held that the time limit for filing an appeal with an

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<sup>1</sup> *Initial Decision* at 9.

<sup>2</sup> *Initial Decision* at 9-10.

administrative adjudicatory agency, such as OEA, is mandatory and jurisdictional in nature. Recognizing this fact, we too have held that the statutory 30-day time limit for filing an appeal in this Office is mandatory and jurisdictional. See *King v. Department of Corrections*, OEA Matter No. T-031-01, *Opinion and Order on Petition for Review*, (Oct. 16, 2002), \_\_D.C. Reg.\_\_ ( ). Therefore, we lack the discretion to decide under what circumstances the 30-day filing deadline will or will not be applied. We cannot ignore a statutory mandate when it pleases a party. Rather, we believe the statute must be adhered to in all cases.

Employee's next argument is that the ruling in the case of *JBG Properties, Inc. v. District of Columbia Office of Human Rights*, 364 A.2d 1183 (D.C. 1976) should be applied to this appeal. *JBG Properties* involved a JGB employee who filed a discrimination claim against JGB with the Office of Human Rights ("OHR"). By statute OHR was given a certain number of days within which to serve JGB with the discrimination complaint and then an additional number of days after service of the complaint to then determine whether it had jurisdiction over the claim. Because OHR was 12 days late in meeting its time requirements, JGB sought to have the complaint dismissed for lack of jurisdiction. The District of Columbia Court of Appeals recognized that "[t]he word 'shall' in a statute . . . generally creates a mandatory duty."<sup>3</sup> The Court went on to state, however, that "for obvious reasons founded in fairness and justice, time provisions are often found to be directory merely, where a mandatory construction might do great injury to persons not at fault, as in a case where slight delay on the part of a public officer might prejudice private rights or the public interest. For the reason that individuals or the public should not be

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<sup>3</sup> *Id.* at 1185.

made to suffer for the dereliction of public officers, provisions regulating the duties of public officers and specifying the time for their performance are in that regard generally directory.”<sup>4</sup>

We fail to see how the *JGB Properties* case is on point with Employee’s appeal. The 30-day filing period relevant to this case was the time within which Employee, not a public official, had to act. Moreover, Employee’s delay in filing his appeal was not “slight.” As already noted, Employee did not file his petition for appeal with this Office until November 29, 1999—well over four months after receiving Agency’s July 21, 1999 letter which clearly stated that it was Agency’s final decision. Employee has not given us a reason to overturn the Initial Decision. As such we uphold the Initial Decision and deny Employee’s Petition for Review.

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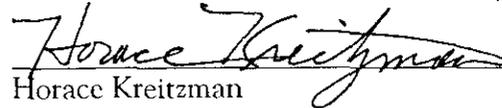
<sup>4</sup> Id.

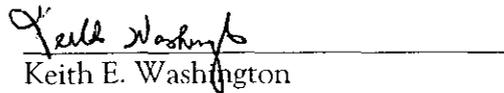
ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

  
Brian Lederer, Chair

  
Horace Kreitzman

  
Keith E. Washington

\_\_\_\_\_  
Barbara D. Morgan

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.