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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
REBECCA BARNES,)	
Employee)	OEA Matter No. J-0260-10
)	
v.)	Date of Issuance: October 1, 2010
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Administrative Judge

Dalton Howard, Esq., and Karl W. Carter, Jr., Esq., Employee Representatives
Bobbie L. Hoye, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 22, 2009, Rebecca Barnes (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools (“DCPS” or “the Agency”) adverse action of removing her from service. I was assigned this matter on or about May 11, 2010. After reviewing the Employee’s petition for appeal, I determined that there existed a question as to whether the OEA has jurisdiction over the instant appeal. Consequently, I issued an order on May 11, 2010, requiring both the Agency and Employee to address said issue in a written brief. Both parties have since complied with said order. After carefully reviewing the Employee’s response, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states that:

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 CONCLUSIONS

According to a letter addressed to the Employee dated June 15, 2009, (“Termination Letter”), the Employee was informed that the effective date of her termination was August 15, 2009. The Termination Letter further provided in relevant part that:

You may elect to file an appeal to this termination in one of the following ways,
not both:

1. You may elect to file an appeal with the [OEA] located at 717 14th Street, N.W., 3rd Floor, Washington, D.C. 20005. That appeal must be filed within thirty (30) calendar days of the effective date of your termination... **or,**
2. You may elect to file a grievance pursuant to Article VI of the Collective Bargaining Agreement by and between the District of Columbia Board of Education and the [Union]...

As was mentioned previously, the Employee was removed from service with an effective date of August 15, 2009. However, she filed her petition for appeal on December 22, 2009. This is well past the 30 day filing deadline that shall be discussed *infra*. Employee, through counsel, explains that she filed her petition for appeal with the OEA because the Washington Teachers Union (“Union”) opted to file a “class grievance” on behalf of Employee and other Union members who had been treated similarly by the Agency. *See* Employee’s Brief at 2. According to Employee, as a result of this grievance process, she was presented with an offer of settlement that she found unacceptable. She further asserts that as a part of the class grievance process, she was not informed of any further appeal rights. She asserts that because Agency did not inform her, again, of her appeal rights, that she should be allowed to press her claims at the OEA. I disagree. I find that Employee’s participation in the class grievance process did not extend her filing deadline with the OEA as she ostensibly argued. Given the instant circumstances, I further find that the Agency could not inform her of any remaining appeal rights with the OEA, at the end of the aforesaid grievance process, because Employee appeal rights with the OEA had expired on or about September 15, 2009.

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 calendar 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. __ (). I find that Employee was duly warned of her option to personally appeal to the OEA in the aforesaid Termination Letter. Further, I find that she opted to allow the Union to press a claim on her behalf as part of class grievance in another forum. Employee had every right to exercise her option to pursue this matter in another forum. However, because she failed to file a petition for appeal in the instant matter with the OEA within the 30 day filing deadline, I find that she is precluded from pursuing said appeal through the OEA.

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 OEA, 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