

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
RONALD HOLMAN,	)	OEA Matter No. 1601-0100-12
Employee	)	
	)	Date of Issuance: March 3, 2015
v.	)	
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Ronald Holman (“Employee”) worked as a Custodian with D.C. Public Schools (“Agency”). On May 16, 2012, Employee received a Notice of Proposed Disciplinary Action from Agency informing him that he would be terminated from his position. Employee was charged with falsifying records; dishonesty; and any other cause authorized by the laws of the District of Columbia.<sup>1</sup> The effective date of the termination was June 1, 2012.<sup>2</sup>

Employee challenged Agency’s action by filing a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 17, 2012. He provided that he was out of work for one year, and as a result, received unemployment insurance benefits for that time period. Therefore,

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<sup>1</sup> The notice provided that when Employee applied for unemployment insurance benefits, he failed to report his earnings. As a result, Employee collected monies that he was not entitled to receive.

<sup>2</sup> *Petition for Appeal*, p. 5 (May 17, 2012).

Employee requested that OEA rescind the adverse action.<sup>3</sup>

Agency submitted its Answer to the Petition for Appeal on July 2, 2012. It argued that Employee knowingly and willfully failed to report his earnings when he applied for and received unemployment insurance benefits. Accordingly, Agency believed its adverse action was proper.<sup>4</sup>

The matter was assigned to an OEA Administrative Judge (“AJ”), who scheduled a Status Conference and subsequently issued a Post Status Conference Order.<sup>5</sup> In the Post Status Conference Order, the AJ directed the parties to submit briefs on the issues. Agency’s brief was due on or before December 4, 2013, while Employee’s brief was due on or before December 30, 2013.

Agency did not file its brief by the required deadline. As a result, the AJ issued an Order for Statement of Good Cause to Agency directing it to submit its brief along with an explanation for its failure to respond to her Post Status Conference Order.<sup>6</sup> Agency’s filings were due by December 13, 2013; however, on that day, the AJ received an email from Agency’s Representative which explained that she had been on medical leave since after Thanksgiving. The Representative provided that she would be able to file the Statement for Good Cause by December 16, 2013, but she would not be able to respond to the Post Status Conference Order for at least a week after that date.<sup>7</sup>

On December 26, 2013, the AJ issued her Initial Decision. She found that Agency failed to respond to the Post Status Conference Order and failed to submit a Statement of Good Cause. The AJ explained that prior to Agency’s Representative taking sick leave, she could have contacted OEA to request an extension of time to file her brief, but she did not. As a result, the

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal* (July 2, 2012).

<sup>5</sup> *Order Convening a Status Conference* (October 9, 2013) and *Post Status Conference Order* (November 7, 2013).

<sup>6</sup> *Order for Statement of Good Cause* (December 6, 2013).

<sup>7</sup> *Email from Sara White to Administrative Judge* (December 13, 2013).

AJ found that Agency violated OEA Rule 621 by failing to defend its adverse action. Thus, Agency's adverse action was reversed, and it was ordered to reinstate Employee with back-pay and benefits.<sup>8</sup>

Agency filed a Petition for Review with the OEA Board on February 3, 2014. Agency states that new and material evidence is available that was not available when the record closed. It submits a letter from its Representative's doctor that is dated November 26, 2013, and provides that she was unable to work for at least two to three weeks. Agency also provides a Medical Certification form which states that the Representative's estimated return to work date was December 16, 2013. Agency claims that its failure to respond to the Post Status Conference Order and the Statement for Good Cause was due to circumstances beyond its Representative's control. Therefore, it requests that the Board overturn the Initial Decision and remand the case for a determination on its merits.<sup>9</sup>

In response to the Petition for Review, Employee argues that Agency's Petition for Review is untimely. He contends that the Initial Decision was issued and mailed on December 26, 2013, and Agency submitted its petition thirty-nine days after that date. Employee asserts that Agency had thirty-five days after December 26, 2013 to file its Petition for Review, but it failed to do so. Thus, he argues that the OEA Board lacks jurisdiction to consider Agency's Petition for Review.<sup>10</sup>

In accordance with OEA Rule 633.1 "any party to the proceeding may serve and file a petition for review of an initial decision with the Board within thirty-five (35) calendar days of issuance of the initial decision." Furthermore, D.C. Official Code § 1-606.03(c) provides that ". . . the initial decision . . . shall become final 35 days after issuance, unless a party files a petition

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<sup>8</sup> *Initial Decision* (December 26, 2013).

<sup>9</sup> *District of Columbia Public Schools' Petition for Review*, p. 2-3 (February 3, 2014).

<sup>10</sup> *Employee's Motion to Dismiss Agency's Appeal Due to Lack of Jurisdiction* (March 11, 2014).

for review of the initial decision with the Office within the 35-day filing period.” The D.C. Court of Appeals held in *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991) that “the time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters.”<sup>11</sup> Therefore, OEA has consistently held that the filing requirement for Petitions for Review is mandatory in nature.<sup>12</sup>

In the current case, the Initial Decision was issued on December 26, 2013. Agency did not file its Petition for Review until February 3, 2014. This is well past the thirty-five day deadline. Because the statute is mandatory, this Board does not have the authority to waive the requirement.<sup>13</sup> Accordingly, Agency’s Petition for Review is DISMISSED.

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<sup>11</sup> Also see *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) (citing *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 635 (D.C.1985); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C.1985); *Gosch v. District of Columbia Department of Employment Services*, 484 A.2d 956, 958 (D.C.1984); and *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C.1980)).

<sup>12</sup> *Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), *James Davis v. Department of Human Services*, OEA Matter No. 1601-0091-02, *Opinion and Order on Petition for Review* (October 18, 2006); *Damond Smith v. Office of the Chief Financial Officer*, OEA Matter No. J-0063-09, *Opinion and Order on Petition for Review* (December 6, 2010); and *Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010).

<sup>13</sup> *Assuming arguendo* that this Board could consider the merits of Agency’s claim, the doctor’s note provided by the Representative does not amount to new or material evidence as it relates to the merits of this case. She explained to the AJ that she was out of the office sick and requested an extension to file the Good Cause Statement and brief. She set the deadlines for both filings and yet still failed to adhere to her own revised deadline. The AJ was within her authority to issue her final ruling in this matter.

**ORDER**

It is hereby **ORDERED** that Agency's Petition for Review is **DISMISSED**. As provided in the Initial Decision, Agency's termination action is **REVERSED**. Accordingly, Agency shall reinstate Employee to his last position of record or a comparable position. Additionally, it must reimburse Employee all back-pay and benefits lost as a result of the termination action. Agency shall file with this Board within thirty (30) days from the date upon which this decision is final, documents evidencing compliance with the terms of this Order.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

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.