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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CURTIS ADAMSON)	
Employee)	
)	OEA Matter No.: 1601-0041-04
v.)	
)	Date of Issuance: September 3, 2008
D.C. METROPOLITAN POLICE)	
DEPARTMENT)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Curtis Adamson (“Employee”) was a Sergeant with the D.C. Metropolitan Police Department (“Agency”). On January 28, 2004 Agency issued its final decision to terminate Employee for “neglect of any duty to which assigned or required by the rules and regulations. . .” and “any conduct . . . which is prejudicial to the reputation and good order of the police force, or involving failure to obey or properly observe any of the regulations and orders relating to the discipline and performance of the force.”

The event from which the two charges stem occurred on January 15, 2003 when two officers, under Employee’s supervision, were working as 911 call takers. On that

date a call came in to report a fire. Unfortunately the two call takers under Employee's supervision failed to handle the call properly and the fire proved to be fatal. Agency claims that due to Employee's negligence in supervising these two officers at the time the call came in, Employee neglected his duties. Furthermore, according to Agency, Employee's negligence resulted in "unfavorable news media reports"

Before Agency issued its final decision, Employee filed an internal appeal with Agency. The trial board voted to sustain the charges but to reduce the penalty to a suspension of 70 days. Employee then appealed that decision to the Assistant Chief of Police who reinstated the penalty of removal. Thereafter Employee appealed to the Chief of Police. On January 28, 2004 the Chief issued the final decision. That Chief stated therein that a preponderance of the evidence supported Agency's decision to terminate Employee.

Throughout this series of internal appeals there was in effect a provision which governed the amount of time within which Agency had to render its final decision. That provision, commonly referred to as the "55-day rule," stated the following:

The employee shall be given a written decision and the reasons therefore no later than fifty-five (55) days after the date the employee is notified in writing of the charges or the date the employee elects to have a departmental hearing, where applicable, except that:

(a) when an employee requests and is granted a postponement of a scheduled hearing, the fifty-five (55) day time limit shall be extended by the length of the delay or continuance, as well as the number of days consumed by the hearing . . .

Had Agency adhered to this provision, even with the continuances that were granted for various reasons, it should have rendered its final decision by November 16, 2003.

On March 3, 2004 Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). In an Initial Decision issued February 14, 2006, the Administrative Judge reversed Agency’s action and ordered that Employee be reinstated. The fundamental question to be decided was whether Agency had to strictly adhere to the 55-day rule. After a thorough analysis of the issue, the Administrative Judge concluded that “1) [t]he 55-day rule . . . is a mandatory provision; 2) [a]s a mandatory provision, it ‘establishes [a] guiding principle and a nondiscretionary policy’ for Agency . . . 3) Agency was clearly in violation of the 55-day rule in its processing of the adverse action taken against Employee; and 4) Employee need not show actual harm as a result of Agency’s failure to timely process the adverse action.”¹ Because Agency did not render its final decision until January 28, 2004, the Administrative Judge held that Agency had violated the 55-day rule even with the various continuances taken into consideration. Thus he reversed Agency’s action.

Agency then filed a Petition for Review on March 21, 2006. Agency asks us to reverse the Initial Decision on the grounds “that the 55-day rule provision is not jurisdictional” and because “Employee failed to raise and preserve his allegation that the Department violated the 55-day rule.”²

With respect to its first argument—that the 55-day rule is not a jurisdictional rule—Agency claims that if the rule was jurisdictional in nature, neither party would be “permitted to waive the rule by their conduct or consent.”³ Agency directs our attention to four cases which they claim support their position. We do not believe that either party is allowed to “waive” the 55-day rule as Agency claims. According to Black’s Law

¹ *Initial Decision* at 17.

² *Petition for Review* at 4 and 9.

³ *Id.* at 5.

Dictionary, the word “waive” means to “abandon, renounce, or surrender; to give up (a right or claim) voluntarily.” There is nothing in the plain language of the 55-day rule that appears to give either party the right to abandon or renounce its provisions. While it does allow for an extension of the time within which Agency must act, such an extension is not an abandonment of the rule. On the contrary, the extension is an additional period of time allotted for Agency to render its final decision. Furthermore, the cases cited by Agency were rulings made an arbitrator. We thus find those cases to be unpersuasive.

Agency claims next that Employee failed to raise and preserve his claim pertaining to the 55-day rule. The Administrative Judge addressed this issue in the Initial Decision. He wrote that this argument was without merit. “Since the 55-day rule is mandatory, Agency *must* process an adverse action in accordance with the rule. Therefore, a violation of the rule is an *absolute bar* to the finalization of an adverse action. Viewed thusly, the rule is essentially equivalent to a lack-of-jurisdiction claim, which of course can be raised at any time.”⁴ We agree with the Administrative Judge’s reasoning that the mandatory nature of the 55-day rule renders it comparable to a lack-of-jurisdiction claim. It is an accepted legal principle that lack-of-jurisdiction claims can be raised at any time throughout a proceeding. Thus, Employee did not lose his right to have this issue decided even though he failed to raise it during the appeal process at the agency level.

Based on the foregoing we are compelled to deny Agency’s Petition for Review and uphold the Initial Decision.

⁴ *Initial Decision* at 18. (emphasis in original)

ORDER

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

FOR THE BOARD:

Sherrí Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

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.