

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Maurice George)	Matter No. J-0289-10
Employee)	
)	Date of Issuance:
v.)	June 11, 2010
)	
D.C. Public Schools (Division of Transportation))	Senior Administrative Judge
Agency)	Joseph E. Lim, Esq.
)	

Frank McDougald, Esq., Agency Representative
Maurice George, Employee *pro se*

INITIAL DECISION

BACKGROUND

On March 29, 2010, Employee, a Tow Truck Driver, pay grade 9/8, filed a petition for appeal with the Office of Employee Appeals (OEA). The employee grieved the fact that he was demoted to fleet coordinator from tow truck driver back in May 21, 2008. Agency avers that this Office lacks jurisdiction over this matter because Employee's appeal was untimely.

The matter was assigned to the undersigned judge on May 11, 2010. I ordered Employee to address the jurisdiction issue raised by the Agency. I closed the record after Employee submitted his final arguments on May 26, 2010. No hearing was held, as there were no material facts in dispute.

JURISDICTION

Jurisdiction in this matter was not established.

ISSUE

Whether Employee's appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT

The following facts were submitted by the parties and are uncontroverted:

1. Employee was a Tow Truck Driver in Agency's Division of Transportation.
2. Employee alleges that he was demoted from tow truck driver to fleet coordinator back in May 21, 2008.

3. On March 10, 2010, Employee filed a petition for appeal with this Office.
4. In his brief, Employee did not address the jurisdiction issue. Instead, he repeats his claim that he was “wrongly treated” for being demoted without cause.

ANALYSIS AND CONCLUSION

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) states: “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” Thus, Employee has the burden of proving that this Office has jurisdiction over his appeal. According to OEA Rule 629.1, *id*, a party’s burden of proof is by a “preponderance of the evidence,” which is defined as “[t]hat 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.”

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Among these amendments was the addition of a statutory time limit for filing an appeal in this Office. The relevant section reads as follows: “Any appeal shall be filed within 30 days of the effective date of the appealed agency action.” D.C. Official Code § 1-606.03(a) (2001). The Office’s Rules and Regulations have been amended to reflect this change. *See* OEA Rules 604.1 and 604.2, 46 D.C. Reg. 9299 (1999).

The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature. *See, e.g., District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985). Following these cases, this Office has held that that the statutory 30-day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature. *See King v. Department of Corrections*, OEA Matter No. T-0031-01, *Opinion and Order on Petition for Review* (October 16, 2002), __ D.C. Reg. ____ (). Further, in *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003), __ D.C. Reg. ____ (), it was held that the only situation in which an agency may not “benefit from the [30-day] jurisdictional bar” is when the agency fails to give the employee “adequate notice of its decision and the right to contest the decision through an appeal.” *McLeod*, slip op. at 8. (citations omitted).

Employee filed his appeal on March 10, 2010, almost two years after he learned that he had been demoted. Employee gave no rationale as to why he waited so long to file his appeal, and indeed, failed to address the timeliness issue altogether. Accordingly, I conclude that Employee has failed to meet his burden of establishing this Office’s jurisdiction over his appeal. Thus, Agency’s motion to dismiss is hereby granted and Employee’s petition for appeal is dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge