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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No. 1601-00056-09
SALLIE BRIDDELL)	
Employee)	Date of Issuance: January 11, 2010
)	
v.)	Sheryl Sears, Esq.
)	Administrative Judge
CHILD AND FAMILY SERVICES)		
AGENCY)	
Agency)	
_____)	

Stephen White, Esq. Employee Representative
Linda Seabrook, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Sallie Briddell ("Employee") was a Social Worker for D.C. Child and Family Services Agency ("Agency"). By letter dated July 30, 2008, Camelia Pierre, Administrator, Child Protective Services, notified Employee of a proposal to remove her for the alleged abandonment of her position. Agency charged that Employee had been absent from duty since June 23, 2008, and failed, pursuant to a request from Ms. Wanda Tolliver, to present documentation to support her absences.

By letter dated October 16, 2008, Sandra Jackson, Acting Deputy Director, Program Operations Administration, notified Employee of Agency's final decision to remove her. According to the notice, the removal was effective immediately. The notice stated that Employee had the "right to grieve this action through the negotiated grievance procedure in accordance with the Negotiated Agreement or appeal this action to the

Office of Employee Appeals (OEA) but not both, within fifteen (15) working days of the effective date of this action.”¹

On December 2, 2008, Employee filed a petition for appeal with the D.C. Office of Employee Appeals (“the Office”). It is undisputed that Employee filed her appeal more than thirty (30) after the effective date of the removal. Agency challenged the jurisdiction of this Office over the appeal on the grounds that it was untimely filed. In support of a motion to dismiss Employee’s appeal, Agency presented a copy of a U.S. mail certificate of service of the notice of the removal with a signature of Employee’s name dated October 23, 2008. Agency urged that this Judge conclude that Employee received notice of the removal no later than October 23, 2008, and was, therefore, responsible for timely filing her appeal.

On June 12, 2009, this Judge ordered Employee to submit a statement showing cause why she filed her appeal late. On July 23, 2009, Employee presented a timely statement through her representative, Stephen White. She explained that, at the time the notice of removal was served, several persons lived in her household and one of them signed for the certified mail letter. She denied signing her name on the receipt. However, Employee did not provide any details about when or how she did receive it. On July 8, 2009, this Judge ordered Employee to submit an additional statement on jurisdiction including the date, time, and circumstances under which she received the notice. On July 23, 2009, Employee presented another statement through her representative.

According to Mr. White’s recitation, he made a telephone call to Agency on or about December 2, 2008, and was advised that Employee was removed. After receiving that notice, White immediately filed the appeal for Employee. According to Employee, she did not see the written notice until December 10, 2008, while she was searching the house for her December mortgage statement. This Judge accepted all of the employee’s representations as true and concluded that her representative filed her appeal on December 2, 2008, the date upon which she first had official notice of the removal action. This Judge concluded that, under the circumstances, this was a timely filing and proceeded to conduct a pre-hearing conference and schedule a hearing.

On December 7, 2009, Agency presented a “Request for Reconsideration of Ruling on Timeliness of Employee’s Appeal.” Along with the motion, Agency presented time and attendance sheet dated June 4, 2008 and a receipt for a laptop dated May 7, 2005. Both include signatures that, according to Agency are “nearly identical” to the one on the certified mail receipt of October 23, 2008. Agency challenged the credibility of Employee’s representation that she did not sign the certificate of service for the notice of removal served at her home on October 23, 2008. Agency urged that this Judge find that Employee’s appeal was untimely on the grounds of “justice and fairness” and “on the basis of misrepresentation, fraud and/or other misconduct perpetrated by Employee.”

¹ As will be discussed in detail below, Agency erred in advising Employee that she had only fifteen (15) days to file an appeal. The applicable law provides for thirty (30) days.

By order issued on December 14, 2009, this judge ordered that the hearing would be postponed pending the resolution of the issue of jurisdiction. Employee was not required to respond to the motion but was given the opportunity to do so. The deadline for the submission of Employee's response (if any) to Agency's Request for Reconsideration of Ruling on Timeliness of Employee's Appeal was January 6, 2010. Employee elected not to make any submission. The record is now closed.

JURISDICTION

For reasons that will be detailed below, this Office does not have jurisdiction over Employee's appeal.

ISSUES

Whether this appeal should be dismissed for untimely filing.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that [t]he employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." Employee has the burden of proving that this Office has jurisdiction over her appeal.

ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) lists those actions that employees of the District of Columbia government may appeal to this Office. Section 101(d) of OPRAA amended § 1-606.03 of the Code to provide for jurisdiction as follows:

(a) An employee may appeal a final agency decision effecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in *removal*, reduction in grade, or suspension for 10 days or more . . . or a reduction in force.
Emphasis added.

However, there is a statutory requirement for the timely filing of an appeal. "Any appeal shall be filed within 30 days of the effective date of the appealed agency action." D.C. Official Code § 1-606.3 (a); *see also* OEA Rule 604.2, 46 D.C. Reg. 9297 (1999). In accordance with the statute, the deadline for filing is mandatory and cannot be waived.

Employee's appeal was not timely filed. As noted, the deadline for filing was thirty (30) days after the effective date of the action. The action was effective on October 16, 2008. Employee's appeal filed on December 2, 2008, was certainly more than thirty (30) days later. Agency had an obligation to notify Employee of the removal and her right to file an appeal. According to the final notice, Agency did include notice of Employee's right to appeal although it was not accurate.

That error could be easily corrected by this Office allowing Employee the full thirty (30) days to file. However, the question is when the clock began to run on the deadline. Employee denies that it was she who signed the certificate of service for the delivery of the final notice on October 23, 2008. Agency challenges this assertion with evidence of Employee's signature as it appears on documents generated earlier in her tenure at Agency. According to the review of this Judge, the signature that appears on all of the documents looks the same. Together, they are *prima facie* evidence that Employee signed for all of the documents, including the October 23, 2008 notice of removal.

Employee offered no argument or evidence such as the opinion of a signature or handwriting forensics expert to contradict the documentary evidence that supports Agency's claim that Employee received the notice on October 23, 2008. This Judge finds as a fact that Employee received the final notice of removal on October 23, 2008. Employee's appeal was due thirty days after that but was not filed until December 2, 2008. The deadline for filing is statutory and mandatory. Employee's untimely appeal does not invoke the jurisdiction of this Office and must be dismissed.

ORDER

It is hereby ORDERED that this petition for appeal is dismissed for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE