

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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:)	
)	
CARMEN FAULKNER,)	
Employee)	OEA Matter No. 1601-0135-15R16
)	
v.)	
)	Date of Issuance: July 11, 2017
D.C. PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON REMAND

Carmen Faulkner (“Employee”) was a Teacher with D.C. Public Schools (“Agency”). Agency issued a notice to Employee that she would be terminated from her position because she received a score of “minimally effective” under IMPACT, its performance assessment system. The effective date of Employee’s termination action was August 7, 2015.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 4, 2015. In her petition, she alleged that her principal provided inaccurate information on her evaluation. Additionally, she asserted that she was not provided with the requisite meetings and that the meeting dates were offered during a period that she was on Family Medical Leave. Therefore, she requested that she be reinstated with back pay and

¹ *Petition for Appeal*, p. 5-6 (September 4, 2015).

attorney's fees.²

On October 7, 2015, Agency filed its response to Employee's Petition for Appeal. It contended that Employee was assessed over the course of three cycles with five separate observations. Agency provided that at the conclusion of each evaluation, Employee had a conference with her evaluator. Moreover, it claimed that when Employee was unable to meet with the evaluator, several attempts were made via email to schedule conferences within the required fifteen-day period.³

Before issuing her Initial Decision, the Administrative Judge ("AJ") issued an Order Scheduling Pre-hearing Conference on January 19, 2016.⁴ Neither Employee, nor her attorney, attended the Pre-hearing Conference. Consequently, the AJ issued an Order for Statement of Good Cause to Employee because she failed to attend the conference. Employee had until February 3, 2016, to respond.⁵

The AJ issued her Initial Decision on February 17, 2016. She ruled that in accordance with OEA Rule 621, Employee's case was dismissed for failure to prosecute due to her failure to attend the scheduled Pre-hearing Conference and her failure to submit a Good Cause Statement. Therefore, Employee's case was dismissed.⁶

On February 24, 2016, Employee's attorney filed a Petition for Review with the OEA Board. Employee's counsel provides that she was out of the office because her mother passed away on January 17, 2016, after suffering a massive stroke. She notified all parties and her staff via email that she was out of the office. Funeral services were held on January 27, 2016, but due to a blizzard, the burial did not occur until February 2, 2016. Employee's counsel explained that

² *Id.* at 2.

³ *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, p. 1-7 (October 7, 2015).

⁴ *Order Scheduling Pre-hearing Conference* (November 23, 2015).

⁵ *Order for Statement of Good Cause* (January 20, 2016).

⁶ *Initial Decision*, p. 2-3 (February 17, 2016).

a new law clerk attempted to mail a Statement of Good Cause to OEA on February 3, 2016, but she did not list the complete address for OEA. As a result, Employee requested that the matter be remanded to the AJ and scheduled for a hearing.⁷

The OEA Board held that Employee provided sufficient evidence that her representative was unavailable due to the sudden death of her mother. The Board relied on *Murphy v. A.A. Beiro Construction Co. et al.*, 679 A.2d 1039, 1044 (D.C. 1996), where the District of Columbia Court of Appeals held that “decisions on the merits of a case are preferred whenever possible, and where there is any doubt, it should be resolved in favor of trial.”⁸ Therefore, in the interest of justice and fairness, the Board remanded to the Administrative Judge to consider the merits of Employee’s appeal.⁹

The AJ held a Status Conference and requested that both parties file briefs addressing whether Agency followed the proper District of Columbia statutes, regulations, and laws related to the IMPACT procedures. After considering briefs from both parties, the AJ held that Employee was entitled to a post-observation conference within fifteen days of her December 4, 2014 observation. Although the conference did not take place within the fifteen-day period, the AJ ruled that Agency did attempt to meet with Employee at least twice, as is required by the IMPACT procedures. She held that but for Employee’s unavailability, Agency would have complied with the process. Therefore, she upheld Employee’s termination.¹⁰

Employee filed a Petition for Review on November 29, 2016. She argues that the Initial Decision was based on an erroneous interpretation of the law and was not based on substantial

⁷ *Petition for Review*, p. 1-2 (February 24, 2016).

⁸ The OEA Board also followed this holding in *Diane Gustus v. Office of Chief Financial Officer*, OEA Matter No. 1601-0025-08, *Opinion and Order on Petition for Review* (December 21, 2009) and *Jerelyn Jones v. D.C. Public Schools*, OEA Matter No. 2401-0053-10, *Opinion and Order on Petition for Review* (April 30, 2013).

⁹ *Carmen Faulkner v. D.C. Public Schools*, OEA Matter No. 1601-0135-15R16, *Opinion and Order on Petition for Review* (March 29, 2016).

¹⁰ *Initial Decision on Remand*, OEA Matter No. 1601-0135-15R16, p. 7-8 (October 25, 2016).

evidence. Further, she asserts that Agency failed to comply with the IMPACT requirements. Accordingly, she requests that she be reinstated and awarded damages and attorney's fees.¹¹

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review *shall set forth objections to the initial decision supported by reference to the record* (emphasis added). The Board may grant a Petition for Review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Thus, Employee was required to offer an objection to the Initial Decision, and those objections should have been supported by references to the record. Employee offered two sentences as the basis of her Petition for Review. She provided two, general objections in her petition, and she failed to provide any supporting evidence to substantiate her objections. With no arguments presented, this Board has no basis upon which to rule on Employee's petition. This Board has consistently held that merely disagreeing with the AJ's ruling is not a valid basis upon which a Petition for Review can be granted.¹² Accordingly, Employee's Petition for Review is denied.

¹¹ *Petition for Review*, p. 2 (November 29, 2016).

¹² *Michael Dunn v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0047-10, *Opinion and Order on Petition for Review* (April 15, 2014); *Gwendolyn Gilmore v. D.C. Public Schools*, OEA Matter No. 1601-0377-10, *Opinion and Order on Petition for Review* (September 16, 2014); and *Garnetta Hunt v. Department of Corrections*, OEA Matter No. 1601-0053-11, *Opinion and Order on Petition for Review* (July 21, 2015).

ORDER

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

FOR THE BOARD:

Sheree L. Price, Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.