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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CHARLOTTE CLIPPER,)	
Employee)	
)	OEA Matter No.: 1601-0125-11
v.)	
)	Date of Issuance: September 16, 2011
DC NATIONAL GUARD,)	
Agency)	SOMMER J. MURPHY, Esq.
_____)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 28, 2011, Charlotte Clipper (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the DC National Guard’s (“Agency”) decision to terminate her. Agency’s notice stated that Employee was being removed from service as a result of charges of: 1) malfeasance; 2) insubordination; and 3) neglect of duty. Employee’s termination was effective on May 20, 2011.

This matter was assigned to me on September 1, 2011. I issued an Order on September 2, 2011, directing the Employee to present legal and factual arguments to support her argument that this Office has jurisdiction over her appeal. The Order directed Employee to submit her brief by September 12, 2011. Employee was advised that she had the burden of proof with regard to the issue of jurisdiction. Employee was further advised that failure to respond to this Administrative Judge’s Order in a timely fashion may result in sanctions, including dismissal of this appeal. Employee did not submit a brief on the issue of jurisdiction. After reviewing the record, I determined that a hearing was not required. The record is now closed.

JURISDICTION

As will be explained below the Jurisdiction of this Office has not been established.

ISSUE

Whether OEA has jurisdiction over this matter.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

On May 17, 2011, Agency notified Employee that she was being removed from service. The notice of termination stated that the effective date of her termination was May 20, 2011. Agency informed Employee that she had the right to appeal her termination to this Office. The notice of termination letter further stated that: "In accordance with section 1618 of the regulations, you are entitled to appeal this removal action to the Office of Employee Appeals (OEA) within thirty (30) days of this final decision."¹

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." OEA Rule 629.1, states that The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean: "[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. Amended D.C. Code §1-606.3(a) states:

"An employee may appeal a final agency decision affecting 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...."

Thus, §101(d) restricted this Office's jurisdiction to employee appeals from the following personnel actions only: a performance rating that results in removal; a final agency decision affecting an adverse action for cause that results in removal, a reduction in grade, a suspension of 10 days or more, or a reduction-in-force.

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.² Furthermore, in *McLeod v. D.C. Public Schools*,³ it was held that the only situation in which an agency may not "benefit from the [30-day] jurisdictional bar" is when the

¹ Petition for Appeal

² 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's Board 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. ____ ().

³ OEA Matter No. J-0024-00 (May 5, 2003), __ D.C. Reg. ____ ().

agency fails to give the employee “adequate notice of its decision and the right to contest the decision through an appeal.”

In this case, Employee’s termination was effective on May 20, 2011. Employee had thirty (30) days from the effective date of termination to file a petition for appeal with this Office. Employee did not file her appeal until June 28, 2011, more than thirty (30) days after the effective date of her termination. Employee has not proffered any evidence to support a contention that she did not receive adequate notice from Agency, therefore the exception for late filing does not apply.

Based on the foregoing reasons, I conclude that Employee has failed to meet her burden of proof by establishing that OEA has jurisdiction over this matter. Thus, Employee’s petition for appeal is dismissed.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

SOMMER J MURPHY, ESQ
ADMINISTRATIVE JUDGE