

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:)	
)	
Elizabeth Aviles-Wynkoop,)	
Employee)	OEA Matter No. J-0034-17
)	
v.)	
)	Date of Issuance: June 5, 2018
District of Columbia Office of)	
Contract and Procurement,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Elizabeth Aviles-Wynkoop (“Employee”) worked as a Contract Specialist with the District of Columbia Office of Contract and Procurement (“Agency”). On November 7, 2016, Agency issued a termination notice to Employee. According to Agency, Employee was removed from her position pursuant to Chapter 8, Section 814 of the D.C. Personnel Regulations (“DPR”). Specifically, Agency explained that Employee was removed during her one-year probationary period. The effective date of Employee’s removal was November 21, 2016.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on February 28, 2017. She argued that Agency improperly placed her in a probationary status.

¹ *Petition for Appeal*, p. 1 and 5 (February 28, 2017).

Employee explained that prior to her employment with Agency she held a federal career appointment during which she completed her probationary period. Consequently, she provided that pursuant to D.C. Official Code § 1-631.02, she was exempt from serving a probationary period as a Career Service employee with the District government. Accordingly, Employee requested that her termination be overturned and that her accrued annual and sick leave be restored at the proper rate of eight hours per pay period.²

On May 10, 2017, Agency filed a response to Employee's Petition for Appeal. It provided that Employee was properly removed, as she was only one month into her probationary period. Agency reasoned that Employee's argument was inherently flawed that she was not required to serve a probationary period because she had completed the requirement during her federal career appointment. Agency did not dispute that Employee satisfied her probationary period with the federal government. However, it asserted that Employee was notified of her requirement to serve a probationary period as a District government employee new hire. Additionally, Agency argued that Employee did not have the statutory right to appeal her removal to OEA, as OEA's jurisdiction is restricted to employees who have attained permanent status. Furthermore, Agency claimed that Employee's petition was untimely filed. It provided that Employee challenged its removal action on February 28, 2017, nearly three months after the effective date, and well beyond the required thirty-day appeal period. As a result, Agency reasoned that OEA lacked jurisdiction because it could not consider appeals of probationary employees. Therefore, it requested that Employee's Petition for Appeal be dismissed.³

On November 8, 2017, the AJ issued her Initial Decision. She found that there was no evidence in the record to support a finding that Employee's completion of one or more

² *Id.* at 2.

³ *Agency's Brief in Support of Motion to Dismiss for Lack of Jurisdiction and Statement of Good Cause*, p. 1-5 (May 10, 2017).

probationary periods in the federal sector exempted her from serving a probationary period when she began her employment with Agency. Moreover, the AJ found that the submissions by Agency reasonably lead to the conclusion that Employee was required to serve a probationary term with Agency; that she was terminated during her probationary period; and that Agency complied with the notice requirement provided by Chapter 8 of the DPR. Accordingly, she ruled that pursuant to DPM § 813.3, Employee was in a probationary status at the time of her termination. Thus, she held that OEA lacked jurisdiction over Employee's appeal.⁴

Employee filed her Petition for Review on December 29, 2017. She cites to several federal and District government statutes and regulations which she believes proves that she did not have to serve a new probationary period. Employee maintains that OEA has jurisdiction over Agency's termination action. Therefore, she requests that the Initial Decision be reversed.⁵

In accordance with OEA Rule 633.1 "any party to the proceeding may serve and file a petition for review of an initial decision with the Board within thirty-five (35) calendar days of issuance of the initial decision." Furthermore, D.C. Official Code § 1-606.03(c) provides that ". . . the initial decision . . . shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period." The D.C. Court of Appeals held in *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991), that "the time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters."⁶

⁴ *Initial Decision*, p. 4-5 (November 8, 2017).

⁵ *Employee Response Petition for Review from Administrative Judge's Initial Decision*, p. 1-27 (December 29, 2017).

⁶ Also see *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991) (citing *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 635 (D.C.1985); *Thomas v. District of Columbia Department of*

In the current case, the Initial Decision was issued on November 8, 2017. Therefore, Employee had thirty-five days after that date to file an appeal with the OEA Board. Attached to Employee's Petition for Review is an email sent to OEA's Executive Director which provided that she was unable to file her petition in person at OEA or via fax on December 29, 2017. Accordingly, Employee requested that OEA accept her filing and date stamp it for December 29, 2017. The Board will note that OEA's offices did close early on December 29, 2017, and as a result, the office did accept Employee's appeal and date stamp it, per her request. However, Employee's appeal was still untimely filed. The thirty-five day deadline in which Employee should have appealed the AJ's Initial Decision was December 13, 2017. Employee's appeal was filed nearly two weeks after the deadline. Because the filing deadline is mandatory, this Board is unable to address any issues raised by Employee in her Petition for Review. Therefore, the Petition for Review is denied.

Employment Services, 490 A.2d 1162, 1164 (D.C.1985); *Gosch v. District of Columbia Department of Employment Services*, 484 A.2d 956, 958 (D.C.1984); and *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C.1980)).

Additionally, the Court of Appeals recently held in *Barbara Brewer v. D.C. Office of Employee Appeals and D.C. Public Schools*, No. 15-CV-299 and 15-CV-813 (D.C. 2017), that deadlines contained within statutes can be jurisdictional. Because deadlines for Petitions for Review are included in the D.C. Official Code, OEA has consistently held that the filing requirement is mandatory in nature. See *Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), *James Davis v. Department of Human Services*, OEA Matter No. 1601-0091-02, *Opinion and Order on Petition for Review* (October 18, 2006); *Damond Smith v. Office of the Chief Financial Officer*, OEA Matter No. J-0063-09, *Opinion and Order on Petition for Review* (December 6, 2010); *Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010); *Dametrious McKenny v. D.C. Public Schools*, OEA Matter No. 1601-0207-12, *Opinion and Order on Petition for Review* (February 16, 2016); *Carolyn Reynolds v. D.C. Public Schools*, OEA Matter No. 1601-0133-11, *Opinion and Order on Petition for Review* (May 10, 2016); and *Jeffrey Ryne v. Department of Behavioral Health*, OEA Matter No. J-0031-16, *Opinion and Order on Petition for Review* (July 11, 2017).

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

Jelani Freeman

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.