

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. 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:)	
)	
HOBART WILSON,)	OEA Matter No. 1601-0031-12
Employee)	
)	Date of Issuance: April 30, 2013
)	
OFFICE OF STATE SUPERINTENDENT)	
OF EDUCATION,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Hobart Wilson (“Employee”) worked as a Bus Attendant for the Office of State Superintendent of Education (“Agency”). On October 31, 2011, Agency issued a notice of removal to Employee. The notice provided that he was terminated for “malfeasance – misuse of official position for unlawful or personal gain.” The letter was signed by Ryan Solchenberger, Director of Student Transportation.¹

On November 16, 2011, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He argued that he never received notification from Agency about the malfeasance charge.² Employee contended that Agency sent notice of the original complaint to the wrong address. He requested that he be reinstated to his position and allowed the

¹ *Petition for Appeal*, p. 7 (November 16, 2011).

² According to Employee the malfeasance charge stemmed from an overpayment of unemployment funds.

opportunity by Agency to repay the debt owed.³

On November 18, 2011, OEA sent a request to Agency to respond to Employee's Petition for Appeal. The letter was addressed to Mr. Solchenberger. However, Agency failed to respond. Consequently, the OEA Administrative Judge ("AJ") issued an Order for Statement of Good Cause. The Order provided that Agency had until the close of business on January 30, 2012, to respond.⁴

Agency did not respond to Order for Statement of Good Cause. Accordingly, the AJ issued her Initial Decision on February 3, 2012. She held that in accordance with OEA Rule 608.2, Agency was required to file an answer to Employee's Petition for Appeal within thirty calendar days. As a result, OEA Rule 610.3 provided that Agency's failure constituted a default and gave her the authority to render an appropriate decision. The AJ ruled that Agency did not exercise due diligence in defending the appeal. Therefore, she reversed its action against Employee and reinstated him to his position with back pay and benefits.⁵

On March 8, 2012, Agency filed a Petition for Review with the OEA Board. It explained that it was not properly served any of the documents mailed by OEA. Agency contended that because OEA rules do not establish who the appropriate recipient is for service upon an agency, it would rely on District laws and historical practice to determine such recipient. It argued that pursuant to District law, OEA should have served the State Superintendent instead of Mr. Solchenberger because he was merely a manager at Agency and not its Director.⁶

Despite Agency's contention, the OEA Rules do address to whom documents should be mailed, if there is no prior designation. OEA Rule 610.1(g) provides the following:

³ *Petition for Appeal*, p. 8 (November 16, 2011).

⁴ The Order for Statement of Good Cause was also sent to Mr. Solchenberger. *Order for Statement of Good Cause* (January 18, 2012).

⁵ *Initial Decision*, p. 2-3 (February 3, 2012).

⁶ *Petition for Review*, p. 2-4 (March 8, 2012).

An agency's answer in which the allegations of a petition are contested shall contain the following:

- (g) The designation of, and signature by, the authorized agency representative. If the agency fails to designate a representative, the Office shall regard the agency director as the representative.

Therefore, as Agency contends in its Petition, all documents should have been mailed to its State Superintendent, who serves as the Director of the office. OEA's administrator and AJ erred when it addressed documents to Mr. Solchenberger. Mr. Solchenberger is one of the directors on Agency's Executive team. However, he is not the Agency Director. Hosanna Mahaley Jones has been the Director since February of 2011, prior to the Petition of Appeal being filed. As a result, all filings should have been mailed to her attention. Accordingly, we must remand this matter to the AJ to consider the case on its merits.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED** and the matter is **REMANDED** to the Administrative Judge to consider the case on its merits.

FOR THE BOARD:

William Persina, Chair

Sheree L. Price, Vice Chair

Vera M. Abbott

Necola Y. Shaw

Alvin Douglass

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.