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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

<b>In the Matter of:</b>	)	
	)	
<b>RUSSELL HUNTER</b>	)	<b>OEA Matter No. 1601-0102-05</b>
<b>Employee</b>	)	
	)	
	)	<b>Date of Issuance: November 14, 2005</b>
<b>v.</b>	)	
	)	<b>Rohulamin Quander, Esq.</b>
<b>DISTRICT OF COLUMBIA</b>	)	<b>Senior Administrative Judge</b>
<b>DEPARTMENT OF PUBLIC WORKS</b>	)	
<b>Agency</b>	)	

Clifford Lowery, Employee Representative  
Christine V. Davis, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL HISTORY

On June 17, 2005, Employee, *pro se*, a Motor Vehicle Operator with the D.C. Department of Public Works (the "Agency"), filed a Petition for Appeal with the Office of Employee Appeals (the "Office"), challenging Agency's final notice of May 2, 2005, which imposed a 30-day suspension for cause, effective May 16-June 15, 2005. The case was assigned to this administrative judge (the "AJ") on August 23, 2005. On November 10, 2005, I conducted a Prehearing Conference. Agency was represented by Christine V. Davis, Esquire, who is Agency's general counsel. Employee was represented by Clifford Lowery, union representative from AFGC Local 1975. Mr. Lowery entered his notice of appearance as a preliminary matter during the Prehearing Conference. In anticipation of the Prehearing Conference, Agency filed a Prehearing Statement with 13 attachments. The Employee did not file a Prehearing Statement, but the AJ indicated on the record that no adverse inference would be drawn from his not having filed such a statement,

although it had been mandated when the AJ issued his Order of September 29, 2005, convening the Prehearing Conference.

Agency included a Motion to Dismiss request as part of its Prehearing Statement, asserting that Employee's Petition was not filed within the statutorily mandated time of 30 calendar days of the effective date of the action. Because the case could be decided based on the documents of record, no evidentiary hearing was held. The record is now closed.

### **Untimely filing.**

Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, modified certain sections of the Comprehensive Merit Personnel Act ("CMPA") pertaining to this Office. Of specific relevance to this case is § 101(d) of OPRAA, which amended § 1-606.03(a) of the *D.C. Official Code* (2001) in pertinent part as follows: "Any appeal [to this Office] shall be filed within 30 days of the effective date of the appealed agency action."

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 753, 756 (1975). "A statute that is clear and unambiguous on its face is not open to construction or interpretation other than through its express language." *Caminetti v. United States*, 242 U.S. 470 (1916); *McLord v. Bailey*, 636 F.2d 606 (D.C. Cir. 1980); *Banks v. D.C. Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992), \_\_ D.C. Reg. \_\_ ( ). Further, "[t]he time limits for filing with administrative adjudicatory agencies, as with the courts, are mandatory and jurisdictional matters." *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); *White v. D.C. Fire Department*, OEA Matter No. 1601-0149-91, *Opinion and Order on Petition for Review* (September 2, 1994), \_\_ D.C. Reg. \_\_ ( ); *Taylor v. D.C. Department of Corrections*, OEA Matter No. 1601-0061-99, \_\_ D.C. Reg. \_\_ ( ).

Employee filed his petition for appeal on June 17, 2005. I find that that date was 32 days after the effective date of the disciplinary action. However, as of October 21, 1998, § 101(d) of OPRAA clearly and unambiguously removed from the jurisdiction of the Office all appeals filed more than 30 days after the effective date of the action being appealed, and likewise any opportunity for an appellant to submit a written "statement of justification"<sup>1</sup> to explain the failure to comply with the statutorily mandated appeal time frame. As such, ". . . , the 30-day filing deadline is statutory and cannot be waived." *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999), \_\_ D.C. Reg. \_\_ ( ).

The only exception to this rule would be a situation where an agency neglected to

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<sup>1</sup> Prior to OPRAA, the Office was able to consider a "Statement of Justification", in which a petitioner could explain why he or she did not file the Petition for Appeal within a certain time frame. Now that the time frame is mandated by law, and not merely a regulation or policy, that option has been eliminated.

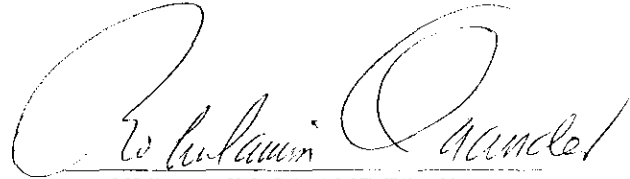
provide an employee with the proper appeal rights notification. Such is not the case here. According to two witness signatures of record, Employee was served the proper written notification on May 2, 2005, although he declined to accept the notification at that time. However, during the Pre-Hearing Conference he fully acknowledged to this AJ that he did receive the 30-day notification of suspension on or about May 9, 2005, which was still seven days before the effective day of the action, and at least 37 days before the expiration of the time to note a Petition of Appeal with the Office.

Thus, assuming *arguendo* that Employee had otherwise established jurisdiction, I find that his appeal to this Office was untimely filed, based upon the above mandatory filing requirement. Having determined that the Office lacks jurisdiction to decide this matter, I likewise find that there is no jurisdiction to address any of the substantive issues raised in the Petition for Appeal. Therefore, the matter must be dismissed.

ORDER

It is hereby ORDERED that Agency's Motion to Dismiss is GRANTED, and that this matter is DISMISSED.

FOR THE OFFICE:

A handwritten signature in cursive script, appearing to read "Rohulamin Quander". The signature is written in black ink and is positioned above the printed name and title.

ROHULAMIN QUANDER, Esq.  
Senior Administrative Judge