

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant 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**

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In the Matter of: )  
)  
MARVIN P. JAMES )  
Employee )  
)  
v. )  
)  
DEPARTMENT OF HUMAN )  
SERVICES )  
Agency )

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OEA Matter No. J-0106-02

Date of Issuance: November 12, 2003

**OPINION AND ORDER**  
**ON**  
**PETITION FOR REVIEW**

Employee was a Youth Corrections Officer with Agency. On November 25, 1997, Employee accepted a four-year term appointment that was scheduled to expire on November 24, 2001. On October 23, 2001, Agency notified Employee in writing that he would be converted to a permanent status beginning November 25, 2001. Agency, however, never

prepared the appropriate personnel forms to effectuate this change. Instead, on December 17, 2001, Agency extended the appointment through November 24, 2002. Nevertheless, on February 4, 2002, Agency informed Employee that his term appointment would expire on February 23, 2002. Thus, on February 23, 2002, Employee was separated from government service.

As a result of these events, Employee filed a grievance pursuant to the collective bargaining agreement negotiated between the District and the Fraternal Order of Police. Employee's grievance was denied. Subsequently, on August 28, 2002, Employee filed a Petition for Appeal with the Office of Employee Appeals.

In an Initial Decision issued May 20, 2003, the Administrative Judge dismissed Employee's appeal, finding that this Office lacked subject matter jurisdiction. The Administrative Judge reached this conclusion based upon the fact that Employee was a term employee at the time of separation and thus could not take advantage of the appellate procedures available to permanent employees. Employee argued that he was entitled to a permanent appointment based on the October 23, 2001, letter that stated his employment status would be converted to permanent. The Administrative Judge rejected this argument and relied upon a long-standing principle of employment law that employees are only entitled to the position to which they are actually appointed. In that Agency never effectuated the change by filing either of the appropriate personnel forms, Employee remained a term employee until the time of separation. For these reasons, Employee's appeal was dismissed.

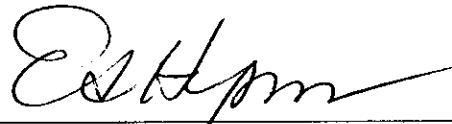
On June 27, 2003, Employee filed a Petition for Review. We believe Employee's petition is untimely and must be denied. D.C. Official Code § 1-606.03(c) (2001) provides, *inter alia*, that "[t]he initial decision of the Hearing Examiner shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period." Further, OEA Rule 634.1 states that "[a]ny 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." 46 D.C. Reg. 9297, 9319 (1999). Attached to the Initial Decision sent to Employee was a statement that informed him of the appellate procedures. The second sentence of that statement informed Employee that he had 35 calendar days from the issuance date of the initial decision in which to file a petition for review.

Employee argues in his Petition for Review that he was out of the country and thus did not receive the Initial Decision until June 20, 2003. June 20, 2003 was the 30<sup>th</sup> day from which the Initial Decision had been issued. Therefore, Employee still had five days—through June 24, 2003—to file a timely Petition for Review. Employee failed to do so. Consequently, we deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:



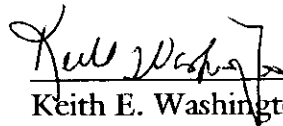
\_\_\_\_\_  
Erias A. Hyman, Chair

RECUSED

\_\_\_\_\_  
Horace Kreitzman



\_\_\_\_\_  
Brian Lederer



\_\_\_\_\_  
Keith E. Washington

The initial decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance 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.