THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
LARRY WATSON,	)	
Employee	)	OEA Matter No. 1601-0011-18
	)	
v.	)	
	)	Date of Issuance: February 26, 2019
	)	
OFFICE OF STATE SUPERINTENDENT	)	
OF EDUCATION,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Larry Watson ("Employee") worked as a Bus Attendant for the D.C. Office of the State Superintendent of Education ("Agency"). On October 5, 2017, Agency terminated Employee for "any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: specifically – neglect of duty, insubordination, unauthorized absence, and absence without official leave." The effective date of Employee's removal was October 5, 2017.[1]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 24, 2017. He claimed that he was harassed by Agency. Accordingly, Employee

[1] *Petition for Appeal*, p. 5-6 (October 24, 2017).

requested that he receive compensation and that he be reinstated to his position.[2]

On November 6, 2017, Agency filed its Answer to Employee's Petition for Appeal. It argued that Employee ignored directives from his supervisors during his tour of duty, and he refused assignments to specific bus routes. Additionally, Agency contended that Employee had a deliberate disregard for the time and attendance rules which affected the integrity of its operations. Moreover, Agency asserted that Employee's removal was within the range of penalties for a third offense of neglect of duty, insubordination, and absence without official leave. Therefore, it requested that his appeal be denied.[3]

The OEA Administrative Judge ("AJ") held an evidentiary hearing on July 10, 2018. However, Employee failed to appear. On July 11, 2018, the AJ issued an order for Employee to provide good cause for his failure to attend the evidentiary hearing. She explained that the order scheduling the date and time of the proceeding was issued on May 21, 2018, and a copy was mailed to Employee at the address listed by him in his Petition for Appeal. The AJ provided that neither the May 21st order nor any previous orders were returned to OEA as undelivered. Therefore, she requested that Employee provide a good cause statement by July 26, 2018 for failing to attend the hearing.[4]

On August 8, 2018, the AJ issued an Amended Initial Decision.[5] She held that Employee failed to attend the evidentiary hearing and failed to show good cause for his failure to attend the hearing. The AJ provided that on the day of the hearing, once she was able to reach Employee by telephone, he failed to offer a reason for his failure to appear. She noted that she offered to

---

[2] *Id.* at 2.
[3] *The Office of the State Superintendent of Education's Answer to Larry Watson's Petition for Appeal*, p. 2-3 (November 6, 2017).
[4] *Order*, p. 1-2 (July 11, 2018).
[5] The only substantive change in the *Amended Initial Decision*, is in the first sentence of the third full paragraph on the fourth page of the August 6, 2018 *Initial Decision* where the month that Employee sent the email to the AJ is corrected. The correct date is July 29, 2018.

delay the hearing to give him time to appear, but Employee declined. Furthermore, the AJ held that Employee did not file a good cause statement by the deadline. Consequently, she dismissed Employee's appeal.[6]

On September 14, 2018, Employee filed a Petition for Review. He explains that due to unforeseen life altering events, he was unable to attend the scheduled hearings. Employee also provides that his supervisor was unprofessional; he was sent home under false accusations; and he was not compensated for working overtime. Moreover, he asserts that he made numerous complaints against his supervisor to Agency's Director, the District Attorney, the Superintendent of Public Schools, the Mayor, and the news media. Therefore, he requests that his petition be reinstated.[7]

In accordance with D.C. Official Code § 1-606.03(c) and OEA Rule 632.1 and 632.2, the 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. OEA, the Superior Court for the District of Columbia, and the D.C. Court of Appeals have consistently held that time limits for filing appeals are mandatory in nature.[8] Specifically, the D.C. Court of Appeals reasoned that because the time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional, it obviates any need for a

---

[6] *Amended Initial Decision*, p. 3-5 (August 8, 2018).
[7] *Petition for Review*, p. 1-2 (September 14, 2018).
[8] *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); *Bruno Mpoy v. District of Columbia Office of Employee Appeals and District of Columbia Public Schools*, 2010 CA 004608 P(MPA) (D.C. Super. Ct. June 6, 2013); *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); *Annie Keitt v. D.C. Public Schools, Division of Transportation,* OEA Matter No. J-0082-09, *Opinion and Order on Petition for Review* (January 26, 2011); *Helen Mulkeen v. D.C. Public Schools,* OEA Matter No. 2401-0063-10, *Opinion and Order on Petition for Review* (May 31, 2013); and *Robert Alvarado v. D.C. Fire and Emergency Medical Services Department,* OEA Matter No. 1601-0173-12, *Opinion and Order on Petition for Review* (November 7, 2017).

showing of prejudice.[9] In accordance with OEA Rule 628.2, Employee has the burden of proving issues of jurisdiction including the timeliness of his filing.

The Amended Initial Decision was issued on August 8, 2018. Employee filed his Petition for Review beyond the 35-calendar day deadline on September 14, 2018. Therefore, Employee's petition was untimely. Because Employee failed to prove that his Petition for Review was timely filed with the Board, we must deny his petition.

Assuming arguendo that we could consider Employee's petition, it would still be denied. In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

> The petition for review *shall set forth objections to the initial decision supported by reference to the record* (emphasis added). The Board may grant a Petition for Review when the petition establishes that:
>
> (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
>
> (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
>
> (c) The findings of the Administrative Judge are not based on substantial evidence; or
>
> (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Thus, Employee's petition not only needed to offer an objection to the Initial Decision, but those objections should have been supported by references to the record. Employee raised no objections to the Initial Decision in his Petition for Review. Instead he offers a general statement that ". . . due to unforeseen life altering issues . . . during the process of [his] appeal, made it impossible for [him] to attend the court dates." Employee had several opportunities to inform

[9] *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); *Zollicoffer v. D.C. Public Schools*, 735 A.2d 944, 945-946 (D.C. 1999); and *Gibson v. Public Employee Relations Board*, 785 A.2d 1238, 1241 (D.C. 2001).

the Administrative Judge that he required an extension of time to address what was occurring in his life. Prior to the hearing, he could have submitted a motion to have it rescheduled. However, instead of communicating with the judge and opposing counsel, Employee chose not to appear and failed to respond to orders. The AJ warned Employee on two occasions that failure to prosecute his appeal could lead to sanctions.[10]

OEA Rule 621.3 clearly provides that "if a party fails to take reasonable steps to prosecute . . . an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action. . . ." The rule also provides that failure to prosecute includes, but is not limited to, a failure to appear at a scheduled proceeding after receiving notice; submit required documents after being provided with a deadline for such submission; or inform this Office of a change of address which results in correspondence being returned. Employee violated two of these requirements by not communicating with the opposing counsel for pre-hearing and hearing dates, failing to appear at the hearing, and failing to respond to the order for good cause.

Additionally, there was no new or material evidence made available by Employee. He did not allege that the judge's decision was based on an erroneous interpretation of statute, regulation, or policy. Likewise, Employee did not assert that the judge's findings were not based on substantial evidence or that the Initial Decision failed to address all material issues of law and fact. This Board has consistently held that merely disagreeing with the AJ's ruling is not a valid basis upon which a Petition for Review can be granted.[11] Accordingly, Employee's Petition for Review is denied.

---

[10] *Order Scheduling Hearing, Discovery, and Subpoena Requests* (May 21, 2018) and *Order for Good Cause* (July 11, 2018).

[11] *Michael Dunn v. Department of Youth Rehabilitation Services,* OEA Matter No. 1601-0047-10, *Opinion and Order on Petition for* Review (April 15, 2014); Gwendolyn *Gilmore v. D.C. Public Schools,* OEA Matter No. 1601-0377-10, *Opinion and Order on Petition for Review* (September 16, 2014); and *Garnetta Hunt v. Department of Corrections,* OEA Matter No. 1601-0053-11, *Opinion and Order on Petition for Review* (July 21, 2015).

ORDER

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

FOR THE BOARD:

_____
Clarence Labor, Chair

_____
Vera M. Abbott

_____
Patricia Hobson Wilson

_____
Jelani Freeman

_____
Peter Rosenstein

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.