

Notice: This decision may be revised before publication in the *District of Columbia Register*. Parties should promptly notify the Office of any formal errors so that this Office can correct them before publishing this decision. This notice is not intended to provide an opportunity for substantive challenge to the decision.

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

In the Matter of: )  
GAYNELL NIXON, ET AL. )  
Employee )  
v. )  
D.C. HOUSING AUTHORITY )  
Agency )

OEA Matter No. 2401-0057-97

Date of Issuance: September 23, 2002

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

Agency removed Employee from her career service position pursuant to a modified reduction-in-force authorized by section 149 of the District of Columbia Appropriations Act for fiscal year 1996. Employee appealed to the Office of Employee Appeals. On September 26, 2001, the Administrative Judge found that Employee had failed to state a claim upon which relief could be granted and thus dismissed the appeal.

On November 1, 2001, Employee, apparently on behalf of each of the Employees in the consolidated appeal, filed a document entitled "D.C. Housing Authority Employees Challenge of

Decision and Request for Appeal.” Employee requests an extension to file an appeal because, due to uncertainties in mail service in the Washington area, AFGE Local 2725 did not give the Employees “information” until October 31, 2001.

D.C. Code § 1-606.3(c) establishes a 35-day time for the filing of a Petition for Review with the OEA Board. A statutorily established time limit for filing an appeal with an administrative adjudicatory agency, as with a court, is mandatory and is considered a jurisdictional matter. *See District of Columbia Pub. Employee Relations Bd. v District of Columbia Metropolitan Police Dep't*, 593 A.2d 641 (D.C. 1991); *Thomas v District of Columbia Dep't of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *Woodley Park Community Ass'n v District of Columbia Bd. of Zoning Adjustment*, 490 A.2d 628, 635 (D.C. 1985). Thus, failure to file a Petition for Review within the 35-day period after the issuance of the Initial Decision deprives the Board of jurisdiction to consider the Petition for Review. *See Hensley v District of Columbia Pub. Sch.*, OEA Matter No. 1601-0177-91, *Opinion and Order on Petition for Review* (Jan. 9, 1998). Therefore, under ordinary circumstances, the Board is unable to grant an extension of time in which to file a Petition for Review.

While in this case Employees did not specifically call their pleading a “Petition for Review” -- the document submitted by Employees is entitled “Challenge of Decision and Request for Appeal” -- it communicates a clear intent to request the Board to review the Initial Decision. Employees thus met the basic standard for a timely filed Petition for Review, thereby giving this Board jurisdiction over the matter. As long as a party files a timely Petition for Review with the OEA Board, the party is not precluded from subsequently amending the petition, even where the amended petition is filed after the 35-day limitation in D.C. Code § 1-606.3(c) (1992) has expired. *See Aderetan v District of Columbia Gen Hosp.*, OEA Matter No. 1601-0021-93, *Opinion and Order on Petition for Review* (Oct. 10, 1997). In *Aderetan*, the Board stated that:

Neither the statute nor OEA rules prohibit a party from seeking, or this Board from granting, permission to amend the pleadings in a particular case. Absent a law or regulation to the contrary, we believe the authority to permit a party to amend pleadings is implicitly within the discretion of the Board.

Employees Petition for Review does not state with specificity the basis for appeal to the Board as is required by the Board's rules of procedures.<sup>1</sup> We treat Employees pleading as a request to amend their Petition for Review by filing a detailed argument as to why the Initial Decision should be reversed, as is contemplated by Rule 634.3.

We take judicial notice of the dire circumstances that obtained after September 11, 2001 and the disruption in normal mail service in the Washington area. We find, therefore, that Employees have stated good cause to allow the filing of an amended Petition for Review. The amended petition shall be filed no later than 45-days after the issuance of this Opinion and Order.

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<sup>1</sup>634.3 The petition for review shall set forth objections to the initial decision supported by reference to the record. 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.

ORDER

Accordingly, it is hereby ORDERED that Employees shall file an amended Petition for Review no later than 45-days from the date of this ORDER.

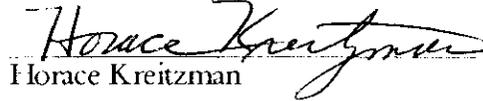
FOR THE BOARD:



Eriq Hyman, Chair



Gwendolyn Hemphill



Horace Kreitzman

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.