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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the matter of :		
GREGORY SHEPERD Employee		OEA MATTER NO. 2401-0081-03
v.		DATE OF ISSUANCE: May 11, 2006
DEPARTMENT OF MENTAL HEALTH Agency		SHERYL SEARS, ESQ. ADMINISTRATIVE JUDGE

Thelma Brown, Esq., Agency Representative
Lewis Norman, Employee Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Gregory Sheperd was separated from the position of Maintenance Mechanic by reduction in force (RIF) on February 28, 2003. He filed a petition for appeal on April 2, 2003.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether Employee's appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999), provides that “[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.” Employee has the burden of proving that this Office has jurisdiction over his appeal.

ANALYSIS AND CONCLUSION

D.C. Official Code § 1-606.03 (2001) lists those actions that employees of the District of Columbia government may appeal to this Office. Section 101(d) of OPRAA amended § 1-606.03 of the Code to provide for jurisdiction as follows:

(a) An employee may appeal a final agency decision effecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a *reduction in force*.

However, there is a mandatory statutory requirement for the timely filing of an appeal. “Any appeal shall be filed within 30 days of the effective date of the appealed agency action.” D.C. Official Code § 1-606.3 (a); *see also* OEA Rule 604.2, 46 D.C. Reg. 9297 (1999). The January 24, 2003 notice of the RIF included notice of Employee’s appeal rights to this Office and information about the filing deadline.

The effective date of Employee’s removal was February 28, 2003. In accordance with the statute, Employee’s appeal was due thirty days after February 28, 2003, on March 31, 2003 (March 30, 2003, the thirtieth day from the effective date was a Sunday). However, Employee filed his appeal on April 2, 2003. Thus, Employee’s appeal was not timely filed. In accordance with the statute, the deadline for filing is mandatory and cannot be waived. Employee’s appeal must be dismissed for untimely filing.

It is worth noting, however, that in the pursuit of this appeal, Employee presented no evidence upon which this Judge could find that he was denied a lawful round of competition in the RIF process or that he did not receive proper advance notice. According to the applicable law, those are the only grounds for granting relief from a RIF.¹

¹ According to the D.C. Official Code § 1-624.08 (2001), which sets forth the standards for review of a RIF appeal, the grounds upon which an employee can challenge a RIF are limited as follows:

Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except as follows—

(1) an employee may file with the Office of Employee Appeals an appeal contesting that separation procedures of subsections (d) and (f) were not properly applied.

d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for

Employee did not file his appeal in a timely fashion according to the statute. Therefore, he did not invoke the jurisdiction of this Office. But even if he had, his appeal presented no challenge to the RIF action pursuant to which relief could have been granted.

ORDER

It is hereby ORDERED that Employee's appeal is dismissed for lack of jurisdiction.

FOR THE OFFICE:


SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE

retention, shall be entitled to *1 round of lateral competition* pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level. . .

(f) Each employee selected for separation pursuant to this section shall be given *written notice of at least 30 days* before the effective date of his or her separation. Emphasis added.