

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
GREGORY SHEPHERD,)	
Employee)	
)	OEA Matter No.: 2401-0081-03
v.)	
)	Date of Issuance: December 17, 2008
DEPARTMENT OF MENTAL HEALTH,)	
Agency)	
_____)	

OPINION AND ORDER

ON

PETITION FOR REVIEW

Gregory Shepherd (“Employee”) worked as a Maintenance Mechanic with the D.C. Department of Mental Health (“Agency”). On January 24, 2003, Employee received written notification that his position would be abolished pursuant to a reduction-in-force (“RIF”). The letter further stated that the RIF would become effective on February 28, 2003. Employee was informed of his right to appeal the action if he believed that the Agency erred in administering the RIF.¹

Thereafter Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on April 1, 2003. The Administrative Judge (“AJ”) issued her Initial Decision on May 11, 2006. She dismissed Employee’s appeal for lack of jurisdiction.

¹ *Employee’s Brief Concerning RIF Errors*, p. 2 (September 10, 2004).

She held that because Employee had not filed his appeal within 30 days of the effective date of the appealed Agency action, as required by D.C. Official Code § 1-606.3(a) the jurisdiction of this Office had not been invoked.

On June 14, 2006, Employee filed a Petition for Review. Employee asks us to reverse the Initial Decision, asserting that 1) new and material evidence is available that, despite due diligence, was not available when the AJ closed the record and 2) the Initial Decision did not address all the issues of law and fact raised in the Petition for Appeal.² Agency filed a response to the Employee's Petition for Review on July 11, 2006.

Nowhere in Employee's Petition for Review does he address the timeliness of his Petition for Appeal. The effective date of the RIF was February 28, 2003. Employee had thirty (30) days from February 28, 2003 to file an appeal with this Office.³ As previously stated, Employee did not file a Petition for Appeal with this Office until April 1, 2003. Thus, the Petition for Appeal was not filed in a timely manner. Based on the foregoing we are compelled to deny Employee's Petition for Review and uphold the Initial Decision.

ORDER

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

FOR THE BOARD:

² *Petition for Review* at 1.

³ Thirty days from February 28, 2003 was March 30, 2003, which was the latest date on which Employee could file a timely appeal. The written notification stated that the time for appealing Agency's action began with the date of Employee's receipt of the notification until no later than 30 calendar days after the effective date of the action.

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date 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 the formal notice of the decision or order sought to be reviewed.