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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: J-0049-13
Brenda Smith,)	
Employee)	
)	Date of Issuance: March 27, 2013
v.)	
)	
District of Columbia Public Schools,)	
Agency)	
_____)	Arien P. Cannon, Esq.
Brenda Smith, Employee, <i>Pro se</i>)	Administrative Judge
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Brenda Smith (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on January 29, 2013, challenging the District of Columbia Public Schools’ (“Agency”) decision to separate her from service as a result of her 2011-2012 IMPACT score. Agency filed its Answer on March 14, 2013, arguing that Employee’s appeal should be dismissed for lack of jurisdiction. This case was assigned to me on February 13, 2013. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether OEA may exercise jurisdiction over Employee’s appeal.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether OEA has jurisdiction over Employee's appeal. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting 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 [RIF]. . . . Any appeal shall be filed within 30 days of the effective date of the appealed agency decision.

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, the burden of proof is defined under a "preponderance of the evidence" standard. Preponderance of the evidence means "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."

At the end of the 2010-2011 school year, Employee received a final IMPACT rating of "Minimally Effective."¹ At the end of the 2011-2012 school year, Employee also received a final IMPACT rating of "Minimally Effective."² On July 27, 2012, Agency notified Employee that she was being terminated as a result of her "Minimally Effective" IMPACT ratings for the 2010-2011 and 2011-2012 school years.³ This notice served as Agency's final decision and included Employee's appeal rights.

In the final notice of termination, Employee was advised that she may file an appeal with the OEA *or* may file a grievance pursuant to the Collective Bargaining Agreement ("CBA") between Agency and Employee's Union. Employee was advised that an appeal with the OEA must be filed within thirty (30) calendar days of the effective date of her termination (August 10, 2012). In addition to either of the two options, Employee was advised of her right to file an appeal to the Agency's Chancellor pursuant to 5-E DCMR 1306, within thirty (30) days of receipt of the contested IMPACT evaluation. Subsequent to Employee receiving Agency's final notice of termination, she filed a Chancellor's Appeal of her 2011-2012 IMPACT rating. The Chancellor's Appeal did not modify, change, or affect the requirement that any appeal to OEA be filed within thirty (30) calendar days of the effective date of Employee's termination.⁴ Ultimately, Employee's appeal to the Chancellor was denied on December 21, 2012, and the 2011-2012 IMPACT score and rating remained the same.

¹ See Agency's Answer, Tab 1 (March 14, 2013).

² *Id.* at Tab 2.

³ *Id.* at Tab 3

⁴ See Agency's Answer, Tab 3, Notice of Minimally Effective IMPACT Rating and Termination (July 27, 2012).

The time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional matters.” *See Zollicoffer v. District of Columbia Pub. Sch.*, 735 A.2d 944, 945-96 (D.C. 1999) (quoting *District of Columbia Pub. Emp. Relations Bd. v. District of Columbia Metro. Police Dep’t*, 593 A.2d 641, 643 (D.C. 1991)). “A failure to file a notice of appeal within the required time period divests the agency of jurisdiction to consider the appeal.” *Id.* at 946. On January 29, 2013, Employee filed her Petition for Appeal with this Office, beyond the thirty-day time period prescribed in D.C. Official Code § 1-606.03, and as set forth in Agency’s final notice of termination.⁵ Furthermore, the fact that Employee filed a Chancellor’s Appeal did not toll the thirty-day time period for Employee to appeal to this Office.

Agency issued its notice of final decision regarding Employee’s termination on July 27, 2012. The effective date of Employee’s termination was August 10, 2012. Thus, she had thirty (30) days from this date to file an appeal with this Office regarding her termination. Assuming, *arguendo*, that Employee contends that the Chancellor’s Appeal Decision was Agency’s final notice of termination, Employee’s appeal to this Office would still be untimely. The Chancellor’s response to Employee’s appeal is dated December 21, 2012. Employee’s appeal to this Office was filed January 29, 2013, again, beyond the thirty (30) day time frame set forth in D.C. Official Code § 1-606.03. Based on the foregoing, I find that this Office does not have jurisdiction over this matter.

ORDER

Accordingly, it is hereby **ORDERED** that Employee’s appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁵ *See Id.*