

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

_____	)	
In the Matter of:	)	
	)	
MARGARET WORTHY	)	
Employee	)	
	)	OEA Matter No.: 2401-0086-03
v.	)	
	)	Date of Issuance: December 11, 2008
DEPARTMENT OF MENTAL HEALTH	)	
Agency	)	
_____	)	

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

Margaret Worthy (“Employee”) worked for the Department of Mental Health (“Agency”) as the Director of the Consumer and Family Affairs division. On February 28, 2003 Agency informed her that her position would be abolished pursuant to a reduction-in-force (“RIF”). The RIF took effect on April 4, 2003.

On the effective date of the RIF, April 4, 2003, Employee filed a Petition for Appeal with the Office of Employee Appeals. The Administrative Judge issued an Initial Decision on May 11, 2006. Believing that the RIF had taken effect on February 28, 2003, the Administrative Judge stated that “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 her appeal on April 4, 2003.

Thus, Employee's appeal was not timely filed."<sup>1</sup> For this reason, the Administrative Judge dismissed the appeal for lack of jurisdiction.

Thereafter, Employee filed a Petition for Review on June 14, 2006. Employee makes several arguments in an effort to invalidate Agency's RIF action. Most notable among Employee's arguments, however, is Employee's claim that the "effective date of her separation was April 4, 2003 and not February 28, 2003, as indicated by the AJ. . . Employee asserts that her April 4, 2003 petition for appeal was filed timely and in accordance with D.C. Official Code 1-606.3 [sic] and OEA Rule 604.2, 46 D.C. Regulation [sic] 9297 (1999)."<sup>2</sup> Agency filed its response to Employee's Petition for Review on July 11, 2006.

D.C. Official Code § 1-606.03 provides the following:

An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

Moreover, OEA Rule 604.2 provides that "an appeal . . . must be filed within thirty (30) days of the effective date of the appealed agency action." Based on these provisions it appears to us that Employee's petition was timely filed and should not have been dismissed on that basis. The Administrative Judge calculated March 30, 2003 as the last day on which Employee had to appeal the RIF, and that would have been correct had the

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<sup>1</sup> *Initial Decision* at 2.

<sup>2</sup> *Petition for Review* at 4.

RIF taken effect on February 28, 2003. However, after careful review of Employee's RIF notice, it is clear that April 4, 2003 was the effective date of Agency's RIF action. The notice states that "[i]n accordance with Chapter 24 of the District's personnel regulations, you will be separated from District government service effective 4/4/2003."

We will not penalize Employee for a miscalculation made by the Administrative Judge. Because April 4, 2003 was the effective RIF date, Employee had until May 4, 2003 to file her Petition for Appeal with this Office. Employee's appeal was filed on April 4, 2003. Therefore, the appeal was timely filed. Accordingly, we hereby grant Employee's Petition for Review and remand this matter to the Administrative Judge for further consideration.

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and this case is **REMANDED** to the Administrative Judge for further consideration.

FOR THE BOARD:

\_\_\_\_\_  
Sherri Beatty-Arthur, Chair

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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 formal notice of the decision or order sought to be reviewed.