

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Sheila Tyler,)	OEA Matter No. J-0092-17
Employee)	
)	
)	Date of Issuance: December 20, 2017
v.)	
)	
Metropolitan Police Department,)	Joseph E. Lim, Esq.
_____)	Senior Administrative Judge
Agency)	

Sheila Tyler, Employee *pro se*
Kathleen Crenshaw, Agency Director

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 20, 2017, Sheila Tyler (Employee), a Property Evidence Control Technician in the Career Service, filed a petition for appeal from Metropolitan Police Department (Agency)'s action suspending her from her position for three (3) calendar days with five (5) days held in abeyance and with two (2) days annual leave forfeited, effective July 10, 2017. This appeal was assigned to me on October 23, 2017.

On November 29, 2017, I ordered Employee to meet her burden of proof that the Office of Employee Appeals ("OEA") has jurisdiction over her appeal. Employee responded on December 8, 2017. Because this matter could be decided based on the documents of record, no additional proceedings were held. The record is closed.

JURISDICTION

Due to Employee's untimely filing, the Office lacks jurisdiction over this matter.

ISSUE

Whether this matter must be dismissed for lack of jurisdiction.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

The following facts are not subject to genuine dispute:

1. Employee, a Property Evidence Control Technician for more than seven years, was served with an advance notice on April 3, 2017, proposing a ten (10) calendar days suspension without pay for misconduct violating Chapter 16, Part I, Section 1605.5, of the D.C. Personnel Manual.
2. On May 31, 2017, Employee received the final decision reducing the proposed suspension to three (3) calendar days with five (5) days held in abeyance and with two (2) days annual leave forfeited. The suspension was to be effective July 10, 2017.
3. The final decision advised Employee of her right to appeal the decision either through the union's collective bargaining agreement grievance procedures, or by filing an appeal with the OEA. It advised Employee that she had ten days to file a union grievance or thirty days to file an appeal with OEA.
4. The final decision package included the OEA appeal application and instructions, as well as a complete copy of the OEA Rules of Procedure.
5. It was not until September 20, 2017, more than two months after the effective date of her suspension, that Employee filed the instant petition for appeal with the Office.

Prior to October 21, 1998, the Comprehensive Merit Personnel Act (CMPA), D.C. Law 2-139, D.C. Official Code § 1-601.01 *et seq.* (2001), did not contain a time limit for filing a petition for appeal in this Office. Rather, the Office's Rules and Regulations in effect at that time required a petition for appeal to be filed within 15 business days of the effective date of the action being appealed. *See* OEA Rule 608.2, 39 D.C. Reg. 7408 (1992). Because the filing requirement was not mandated by statute, the Office's Rules specifically permitted an Administrative Judge to waive the requirement for good cause shown. *See* OEA Rule 602.3, 39 D.C. Reg. at 7405.

However, effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, amended certain sections of the CMPA. Among these amendments was the addition of a statutory time limit for filing an appeal in this Office. The relevant section reads as follows: "Any appeal shall be filed within 30 days of the effective date of the appealed agency action." D.C. Official Code § 1-606.03(a) (2001). The Office's Rules and Regulations have been amended to reflect this change. *See* OEA Rules 604.1 and 604.2, 59 D.C. Reg. 2129 (March 16, 2012).

The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and

jurisdictional in nature. *See, e.g., District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985). Following these cases, this Office's Board has held that that the statutory 30-day time limit for filing an appeal in this Office is mandatory and jurisdictional in nature. *See King v. Department of Corrections*, OEA Matter No. T-0031-01, *Opinion and Order on Petition for Review* (October 16, 2002). Further, in *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003), it was held that the only situation in which an agency may not "benefit from the [30-day] jurisdictional bar" is when the agency fails to give the employee "adequate notice of its decision and the right to contest the decision through an appeal." *McLeod*, slip op. at 8. (citations omitted).

OEA Rule 628.2, 59 D.C. Reg. 2129, reads as follows: "The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing." According to OEA Rule 628.1, *id*, a party's burden of proof is by a "preponderance of the evidence", which is defined as "[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."

In her appeal, Employee failed to state the basis of her appeal. Before I can address the merits of her appeal, the jurisdictional issue must first be tackled. Although she was given the chance, Employee also failed to explain why she did not file her appeal promptly, once she received her final notice. Instead, her brief sidesteps the issue of jurisdiction entirely, stating only that she should not be the only one charged with neglect of duty.

It is clear that Employee unjustifiably failed to comply with the mandatory filing deadline. The 30-day filing deadline is mandatory, and to date this Office has recognized only one exception to that jurisdictional bar – when the agency fails to give the employee "adequate notice of its decision and the right to contest the decision through an appeal." *McLeod, supra*. Here, Agency clearly gave Employee such notice in its final decision. Employee did not exercise due diligence in timely filing her petition for appeal and has failed to present an argument sufficient for me to broaden the scope of the exception to the mandatory filing deadline articulated in *McLeod*.

Therefore, I conclude that Employee has failed to meet her burden of establishing this Office's jurisdiction over her appeal. Thus, Employee's petition for appeal is dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge