

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2401,)	
)	
and)	PERB Case No. 98-U-05 Opinion No. 576
)	
Beverly C. Neal,)	Motion for Reconsideration
)	
Complainants,)	
)	
v.)	
)	
District of Columbia Department of Human Services,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On January 12, 1998, an Unfair Labor Practice Complaint was filed in the above-captioned case by the American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO (AFSCME) and Beverly C. Neal (Complainants). Complainant Neal was employed by the District of Columbia Department of Human Services (DHS) and was the president of AFSCME, Local 2401. Complainant Neal's employment with DHS terminated on September 30, 1997.

The Complainant alleged that her termination and/or failure to have her appointment renewed was based on her union activities and therefore constitutes an unfair labor practice, as proscribed under the Comprehensive Merit Personnel Act (CMPA), at D.C. Code §§ 1-618.3(a)(1), (3) and (4). On March 9, 1998, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DHS, filed an Answer to the Complaint, denying the commission of any unfair labor practices, and a Motion to Dismiss, based on a failure to state a claim. An Opposition to the Motion was filed by the Complainants. On April 22, 1998, OLRCB filed a Motion for Summary Judgement pursuant to Board Rule 553 and 520.10.

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Upon review of the pleadings, the Executive Director determined that the Complaint allegations failed to meet the jurisdictional time requirements under Board Rule 520.4 for filing an unfair labor practice complaint. Consequently, by letter dated April 24, 1998, the Complaint was administratively dismissed as untimely filed. In pertinent part, the Executive Director's letter stated the following:

After reviewing the Complaint, I have determined that the Complaint: is untimely. Therefore, I am administratively dismissing Ms. Neal's Complaint.

Board Rule 520.4 provides as follows:

Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred.
(Emphasis added.)

The Board has held that "[t]his deadline date is 120 days after the date Petitioner admits [s]he actually became aware of the event giving rise to this complaint allegations, i.e. [notice of] termination of employment." Hoggard v. DCPS and AFSCME Council 20, Local 1959, Slip Op. No. 352, PERB Case No. 93-U-10 (1993). See, also American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, Slip Op. No. 509, PERB Case No. 97-U-07 (1997). In summation, "the time for filing a complaint begins when the employee is informed of the termination decision." Glendale Hoggard v. District of Columbia Public Employee Board, 655 A.2d 320, 323 (D.C. 1995).

In the instant case, the complainant admits that on or about September 12, 1997 she became aware that her appointment would expire on September 30 and that she would not be reappointed. (Compl. at para. 32) Therefore, Ms. Neal was required to file her complaint against DHS within 120 days of the September 12th date. However, Ms. Neal did not file her Complaint until January 28, 1998. This filing occurred 138 days after DHS provided notice that it would not be reappointing the complainant. In light of the above-noted facts, Ms. Neal's filing clearly exceeds the 120 days requirement in Board Rule 520.4. Therefore by this letter, I am dismissing the Complaint.

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (D.C. 1991).

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In view of my determination that the instant complaint is untimely, it is not necessary to consider "Respondent's Motion to Dismiss" and "Respondent's Motion for Summary Judgement".

If you disagree, you may formally request that the Board review my determination. However, pursuant to Board Rule 500.4, this decision shall become final unless a motion for reconsideration is filed within thirty (30) days of this decision

On May 27, 1998, the Complainants filed a Motion for Reconsideration, requesting that the Board reverse the Executive Director's administrative dismissal. OLRCB filed an opposition to the Complainants' request.

The Complainants raise various grounds for reversing the Executive Director's determination. However, we find our determination of when the 120 period under Board Rule 520.4 commenced under the undisputed facts of this case is dispositive of the Motion.^{1/}

The pleadings clearly establish that ever since Complainant Neal returned to the Respondent DHS's employ in 1990, DHS renewed her employment contract annually for 3 years after her initial 4-year term expired on September 30, 1994. Each year Complainant Neal received a notice that her term employment would not be renewed at the end of the fiscal year and each year DHS extended her employment. She alleges that this year she was told the same thing would happen.

In view of the above, we cannot reasonably conclude that the date Ms. Neal, once again, received notice of DHS's latest decision to discontinue her employment constituted the date the

^{1/} The Complainant makes the threshold contention that the Executive Director was without authority to dismiss the Complaint as untimely since the Respondent did not raise the issue of timeliness in any of its pleadings. As noted in the Executive Directors's letter, Board Rules governing the initiation of a cause of action before the Board are mandatory and jurisdictional. PERB v. D.C. Metropolitan Police Dept, 593 A.2d 641 (1991). As such, dismissal of a complaint on such jurisdictional grounds is not waived merely because it is not raised by a party-respondent. Dismissal of a complaint based on timeliness does not necessarily have to originate from the parties to the action. The Executive Director has the authority to dismiss Complaints as untimely based on the pleadings. Harold Fisher, Jr., et al. v.D.C. Public Schools, 43 DCR 1275, Slip op. No. 347, PERB Case No. 92-U-01 and 92-U-02 (1993). See Board Rule 500.4 and 501.13.

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asserted violation of an unlawful termination occurred. If, as it appears here, the agency has a history of taking action to retain an employee beyond his/her limited employment status, we will assume an employee knew or should have known of an alleged unlawful termination on the last day of employment, i.e., September 30, 1997.^{2/}

Based on our determination, we find no reason to address the other arguments advanced by the parties. In view of the foregoing, the Complainants' Motion that we reverse the Executive Director's determination is granted. The Executive Director's administrative dismissal of the Complaint as untimely is reversed. We further find that the Complainant has pled a prima facie case of the alleged violations; however, genuine issues of fact exist that must be resolved by a hearing examiner. Therefore, we deny DHS's Motions to Dismiss and Motion for Summary Judgment and refer this matter for hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainants' request that the Executive Director's administrative dismissal of the Complaint be reversed is granted.
2. The Respondent's Motions to Dismiss and for Summary Judgment are denied. The matter is referred to a hearing examiner for development of a complete record upon which to base a report and recommendation to the Board.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

December 14, 1998

^{2/} We have previously held, the agency's decision to terminate constitutes the alleged violative act and therefore is controlling for purposes of determining timeliness of an alleged unlawful termination under Board Rule 520.4. Glendale Hoggard v. District of Columbia Public Employee Board, 655 A.2d 320, 323 (D.C. 1995). Our holding in the instant case distinguishes between the decision to terminate and the actual termination with respect to the application of Board Rule 520.4 when confronted with the facts discussed herein.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 98-U-05 was sent via facsimile and/or mailed (U.S. Mail) to the following parties on the 14th day of December, 1998.

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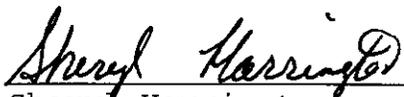
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