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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: J-0042-14
JAMES JENKINS,	)	
Employee	)	
	)	Date of Issuance: February 28, 2014
v.	)	
	)	
OFFICE OF THE CHIEF FINANCIAL OFFICER,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
_____	)	Administrative Judge
James Jenkins, Employee, <i>Pro se</i>		
Treva Saunders, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

James Jenkins (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on December 24 2013, challenging the Office of the Chief Financial Officer’s (“Agency” or “OCFO”) decision to terminate him effective February 8, 2013. Employee was an Unclaimed Property Auditor at the time of his termination.<sup>1</sup> Pursuant to a letter dated May 29, 2013, Employee was terminated under the “at-will” doctrine. An “at-will” employee of Agency serves at the pleasure of the Chief Financial Officer and may be terminated with or without cause and without prior notice. Agency filed a Motion to Dismiss for Lack of Jurisdiction on January 23, 2014, arguing that this Office does not have jurisdiction over employees not covered by the Comprehensive Merit Personnel Act (“CMPA”), including employees of the OCFO. I was assigned this matter on January 27, 2014.

An Order on Jurisdiction was issued on January 31, 2014, which required Employee to address why his appeal should not be dismissed for lack of jurisdiction. A response to the Jurisdiction Order was due on or before February 14, 2014. Employee did not respond to the Jurisdiction Order. Subsequently, a Show Cause Order was issued on February 19, 2014,

<sup>1</sup> See Petition for Appeal (December 24, 2013).

requiring Employee provide a statement of good cause for failure to respond to the Jurisdiction Order. A response to the Show Cause Order was due on or before February 26, 2014. To date, Employee has not responded to the Show Cause Order. The record is now closed.

### JURISDICTION

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

### ISSUES

1. Whether this appeal should be dismissed for lack of jurisdiction.
2. Whether this appeal should be dismissed for failure to prosecute.

### DISCUSSION, ANALYSIS, AND CONCLUSION

This Office's jurisdiction is established pursuant to the District of Columbia's Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code § 1-601-01, *et seq.* (2001). OEA Rule 628.2 states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..."<sup>2</sup> 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." Furthermore, OEA Rule 604.2 provides that an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed agency decision.<sup>3</sup>

Pursuant to D.C. Code § 1-204, Employee was separated as an "at will" Employee, who served at the pleasure of the Chief Financial Officer. In a letter dated February 8, 2013, Agency stated that it was "necessary to discontinue [Employee's] employment," without providing further explanation. Although Agency did not provide an explanation in the February 8, 2013 letter, it did mention several workplace incidents in which Employee engaged in unprofessional behavior. Because Employee was an "at-will" employee, it is not necessary for the Undersigned to determine the merits of Agency's allegations of unprofessionalism by Employee. An Order on Jurisdiction was issued on January 31, 2014, which required Employee to set forth reason(s) why he believed this Agency may exercise jurisdiction over his appeal. Employee failed to respond to this Jurisdiction Order. Accordingly, a Show Cause Order was issued which required Employee to establish good cause for failing to respond to the Order on Jurisdiction. Again, Employee failed to respond to the Show Cause Order. Agency's Motion to Dismiss for Lack of Jurisdiction is based on Employee being "at-will." This Office does not have jurisdiction over employees who are "at-will" and Employee has not provided any assertion to the contrary.

Furthermore, OEA Rule 604.2 provides that an appeal with this Office *must* be filed within thirty (30) calendar days of the effective date of the appealed agency decision.<sup>4</sup> This

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<sup>2</sup>59 DCR 2129 (March 16, 2012).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Office has no authority to review issues beyond its jurisdiction. 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 (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 this Office of jurisdiction to consider the appeal. *See Id.* Here, Employee's termination became effective at the close of business on February 8, 2013.<sup>5</sup> Employee filed his Petition for Appeal with this Office on December 24, 2013, more than ten (10) months after his termination.

Employee was afforded the opportunity to respond to the Jurisdiction Order and set forth his arguments as to why this Office may exercise jurisdiction over this matter; however, Employee elected not to respond to the Jurisdiction Order. As such, I find that Employee has not satisfied his burden of proof in establishing the jurisdiction of this Office. Thus, Agency's Motion to Dismiss must be granted and Employee's appeal shall be dismissed for lack of jurisdiction

In the alternate, and in accordance with OEA Rule 621.3<sup>6</sup>, this Office has long maintained that a Petition for Appeal may be dismissed when an employee fails to prosecute the appeal. Here, an Order on Jurisdiction was issued on January 31, 2014, which required Employee to address why his appeal should not be dismissed for lack of jurisdiction. A response to the Jurisdiction Order was due on or before February 14, 2014. Employee did not respond to the Jurisdiction Order. Subsequently, a Show Cause Order was issued on February 19, 2014, which required that Employee provide a statement of good cause for failure to respond to the Jurisdiction Order. To date, Employee has not responded to the Jurisdiction Order or the Show Cause Order.

OEA Rule 621.3 provides that if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes submitting required documents after being provided with a deadline for such submission. Here, Employee has failed to respond to the Jurisdiction Order and the Show Cause Order. Thus, I find that Employee's appeal shall be dismissed for failure to prosecute.

### **ORDER**

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction, and in the alternate, **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge

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<sup>5</sup> See Petition for Appeal, Attachment A (December 24, 2013).

<sup>6</sup> 59 DCR 2129 (March 16, 2012).