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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
ANN MARIE SCHAEFFLER)	
Employee)	OEA Matter No. 2401-0066-15
v.)	Date of Issuance: July 8, 2015
DISTRICT OF COLUMBIA)	Lois Hochhauser, Esq.
PUBLIC SCHOOLS)	Administrative Judge
Agency)	
_____)	
Ann Marie Schaeffler, Employee <i>Pro Se</i>	
Carl Turpin, Esq., Agency Representative	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 27, 2015, Ann Marie Schaeffler, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the District of Columbia Public Schools, Agency, to terminate her employment, effective May 7, 2015. At the time of her removal, Employee held the position of Coordinator with Agency. I was assigned the matter on June 3, 2015.

Upon review of the file, I determined that the jurisdiction of this Office was at issue. In her petition, Employee stated that she did not know the type of appointment that she held at the time of her termination. Agency, however, maintained that Employee had “at will” status at the time of her removal. Agency moved for the dismissal of the petition, asserting that this Office lacked jurisdiction to hear the appeal of an “at will” employee. On June 4, 2015, I issued an Order notifying Employee that the jurisdiction of this Office was at issue based on Agency’s position that she was employed “at will.” I directed Employee to submit legal and/or factual argument and/or documentation to support her position regarding this Office’s jurisdiction by no later than June 25, 2015. She was notified that failure to respond to the Order in a timely manner

could result in the imposition of sanctions, including dismissal of the petition. I further advised her that her failure to respond could be considered as concurrence with Agency's position regarding her "at will" status at the time of her removal. The parties were advised that unless they were notified to the contrary, the record would closed on June 25, 2015.

The Order was sent to Employee on June 4, 2015; by first class mail, postage prepaid, to the address she listed in her petition. It was not returned by the U.S. Postal Service, and is presumed to have been received by Employee in a timely manner. Employee did not respond to the Order, and did not contact the undersigned. The record closed on June 25, 2015.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

There are two bases upon which this appeal can be dismissed. First, OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), states in pertinent part:

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, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

In this matter, I issued an Order on June 4, 2015, directing Employee to file a response by June 25, 2015, a specific deadline. The Order was mailed to Employee by first class mail, postage prepaid. It was not returned by the U.S. Postal Service, and is presumed to have been received by Employee in a timely manner. Employee did not file a response or contact the undersigned. This Office has long held that it is an appropriate exercise of discretion for an Administrative Judge to dismiss a petition for failure to prosecute when an employee fails to respond to an Order which contains a specific deadline. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). The Administrative Judge concludes that by failing to respond to the Order, which contained a filing deadline, Employee failed to

prosecute this matter. She further concludes that it is an appropriate exercise of her discretion, to dismiss this petition based on Employee's failure to prosecute her appeal.

The second basis for dismissing the petition is Employee's failure to meet her burden of proof regarding the jurisdiction of this matter. Pursuant to OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), employees have the burden of proof on all issues of jurisdiction. This burden must be met by a preponderance of the evidence, defined in OEA Rule 628.2, as "the 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 petition, Employee stated that she did not know the type of service she held at the time of her removal. Agency, on the other hand, maintained that Employee held "at will" status at the time of her removal. This raised an issue of jurisdiction.

It is well established that in the District of Columbia, an "at-will" employee may be discharged "at any time and for any reason, or for no reason at all." *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). See also *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.C. 2006). An "at will" employee lacks job tenure and the expectation of continued employment. See D.C. Code § 1-609.05 (2001). Further, this Office lacks jurisdiction to hear an appeal filed by an "at will" employee. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991). Employee failed to respond to the Order which directed her to submit argument or documentation to support her position that this Office has jurisdiction of this appeal, despite being informed that she had the burden of proof on this issue; and that her failure to respond could be considered concurrence with Agency's position that this Office lacks jurisdiction to hear this matter based on Employee's "at will" status. The Administrative Judge concludes therefore that this petition for appeal should be dismissed based on Employee's failure to meet her burden of proof on the issue of the jurisdiction of this Office to hear this matter.

In sum, for the reasons stated above, the Administrative Judge concludes that this matter should be dismissed based on Employee's failure to prosecute the matter, and/or her failure to meet her burden of proof on the issue of jurisdiction.

ORDER

ORDERED: This petition for appeal is dismissed.¹

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge

¹ Since this matter has been dismissed, Agency's motion to dismiss is denied as moot.