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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
TAFFY TABBS)	
Employee)	OEA Matter No. J-0102-13
)	
v.)	Date of Issuance: August 9, 2013
)	
DISTRICT OF COLUMBIA)	Lois Hochhauser, Esq.
DEPARTMENT OF TRANSPORTATION)	Administrative Judge
Agency)	
)	
_____ Tabby Tabbs, Employee <i>Pro-Se</i> Nana Bailey-Thomas, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 17, 2013, Taffy Tabbs, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the District of Columbia Department of Transportation, to terminate her position as Motor Vehicle Operator.

Upon review of the file, the Administrative Judge noted several jurisdictional issues that required resolution in order to determine if this Office had jurisdiction of this matter. She therefore issued an Order directing Employee to respond to those issues by July 31, 2013. Employee was advised that failure to respond in a timely manner could result in the imposition of sanctions, including the dismissal of the appeal. The parties were notified that unless they were notified to the contrary, the record would close on July 31, 2013. The Order was sent to Employee at the address listed in her petition by first class mail, postage prepaid. Employee did not submit a response and did not contact the undersigned to request an extension of time to respond. The record closed on July 31, 2013.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this appeal be dismissed?

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), employees have the burden of proof on all issues of jurisdiction, including the timeliness of filing the petition. This burden must be met by a “preponderance of the evidence” which is defined in OEA Rule 628.2 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.”

The first jurisdictional issue is that of timeliness. According to DCMR § 604.2, [a]n appeal must be filed within 30 calendar days of the effective date of the appealed agency action. In this case, although Employee listed the effective date of her removal as “July 23, 2012,” that appears to be an error. The Notice of Final Decision for Proposed Removal was issued on January 4, 2013 and provided an effective date for Employee’s termination of January 18, 2013. The Notice of Final Decision included information, including the 30 day requirement, for filing an appeal with OEA. Employee filed her petition with this Office well beyond the 30 calendar days of January 18, 2013, the effective date of her removal. She did not provide any basis to excuse the late filing. Therefore, she has not met her burden of proof on this issue, and the petition for appeal should be dismissed as untimely.

The second jurisdictional issue relates to the grievance filed by Employee. In her petition she stated that she filed a grievance with Local 1975 on August 24 regarding her removal. She did not state the year the grievance was filed, but since her petition for appeal was filed on June 17, 2013, the Administrative Judge finds that the grievance was filed on August 24, 2012. Employee filed the grievance with her Union on August 24, 2012, almost a year before filing this petition for appeal with OEA. D.C. Official Code § 1-616.52(e) provides that employees may appeal a removal with OEA or with their collective bargaining representatives. The method chosen, according to D.C. Official Code § 1-616.52(f), is the one filed first. In this instance, Employee filed the grievance with her Union approximately ten months before filing her petition for appeal with OEA. Thus Employee has not met her burden of proof that this Office has jurisdiction to hear this appeal since she grieved the matter first with her collective bargaining representative.

Finally, OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) 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.” According to OEA Rule 621.3(b), failure of an employee to prosecute an appeal includes the failure to submit documents after being provided with a deadline for the submission. In this case, Employee was notified that her failure to submit a response to the Order could result in sanctions, including the dismissal of the appeal without further notice. The Order was sent to Employee at the address listed in her petition by first class mail, postage prepaid. It was not returned to OEA, and is presumed to have been delivered. Employee did not submit a response and did not contact the undersigned to request an extension of time to respond. The Administrative Judge concludes

that Employee's failure to respond to the Order constitutes a failure to prosecute her appeal and provides as a third basis for the dismissal of this matter. *See e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

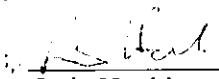
As discussed above, there are three independent reasons for this appeal to be dismissed. The Administrative Judge concludes that the petition should be dismissed.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.¹

FOR THE OFFICE:



Lois Hochhauser, Esq.
Administrative Judge

¹ On July 18, 2013, Agency filed a motion to dismiss the petition for appeal. Since this matter is dismissed, Agency's motion to dismiss is denied as moot.