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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
WAYNE JONES)	OEA Matter No. J-0129-14
Employee)	
)	Date of Issuance: October 16, 2014
v.)	
)	Lois Hochhauser, Esq.
OFFICE OF THE STATE SUPERINTENDENT)	Administrative Judge
OF SCHOOLS)	
Agency)	
)	

Wayne Jones, Employee, *Pro Se*
Jesus Aguirre, Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Wayne Jones, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on September 29, 2014, appealing the proposed decision of the Office of the State Superintendent of Schools, Agency herein, to remove him from his position Driver. I was assigned the matter on September 24, 2014.

Upon review of the file, I noted that the file did not contain a final notice. Therefore, on September 24, 2014, I issued an Order directing Employee to show cause by October 7, 2014 why his petition should not be dismissed because he had not yet been removed from his position. The parties were notified that the record in this matter would close on October 7, 2014, unless they were advised to the contrary. Employee filed a timely response. The record closed on October 7, 2014.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

In his October 7, 2014 response, Employee states, in pertinent part:

Although [Agency] has not made a final agency determination...it has been more than 30 days since I received the Notice of Proposed Removal...Since I have not been removed yet, I would like to still know the status of my employment and not continue to be uncertain about it.

Pursuant OEA Rule 628.2, 59 D.C. Reg. 2129 (March 16, 2012), Employee has the burden of proof on issues of jurisdiction. Employee must meet this burden by a “preponderance of the evidence,” defined in OEA Rule 621.1, as that “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.” This Office’s jurisdiction is conferred upon it by law. D.C. Official Code §1-606.03(a) limits the jurisdiction of this Office to appeals involving performance ratings that result in removals, final agency decisions that result in removals, reductions in grade, suspensions of ten days or more, placement on enforced leave and reductions-in-force. In this matter, Employee concedes that he has not yet been removed. Thus, Employee has failed to meet his burden of proving that this Office has jurisdiction of this matter.

In addition, OEA Rule 608.2, 59 D.C. Reg. 2129 (March 16, 2012), contains the documents and information that are required for a petition for appeal to be complete. They include, of relevance in this matter, the “effective date of the action taken by the agency” and a “copy of agency’s notice of final decision.” Neither are included in the petition filed by Employee because the final action has not yet been taken. The failure of the petition for appeal to include required information is another basis for dismissing this matter.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED¹

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge

¹ Employee contends that he is in non-pay status and that “this delay will cause some financial hardship” for him. Unfortunately, this does not provide a basis to establish jurisdiction where it does not exist.