

Notice: This decision is subject to formal revision before publication in the *District of Columbia Register*. Parties are requested to notify the Office Manager of any formal errors in order that corrections may be made prior to publication. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
THERESA AVILES-RODRIGUEZ)	OEA Matter No. J-0228-11
Employee)	
v.)	Date of Issuance: December 9, 2011
DISTRICT OF COLUMBIA PULBIC SCHOOLS)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
)	
Theresa Aviles-Rodriguez, Employee)	
Bobbie Hoye, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Theresa Aviles-Rodriguez, Employee filed a petition with the Office of Employee Appeals on September 26, 2011, appealing the “evaluation score” she received from the District of Columbia Public Schools, Agency, and the denial of a raise based on the “low score”. As relief she asked that this Office “audit all evaluations.”

The matter was assigned to me on October 28, 2011. Upon review of the documents, it appeared that this Office did not have jurisdiction to hear the appeal because Employee was appealing an evaluation score. She had not alleged or provided any documentation that she had been removed from her position as a result of the score. On November 8, 2011, I issued an Order directing Employee to file written legal and/or factual support for her position regarding this Office’s jurisdiction by 4:00 p.m. on November 30, 2011. The parties were advised that the record would close at 5:00 p.m. on November 30, 2011 without further notice unless they were notified to the contrary. Employee did not respond to the Order, and the record closed on November 30, 2011.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

This Office's jurisdiction is conferred upon it by law. Pursuant to D.C. Official Code §1-606.3(a), this Office's jurisdiction is limited 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, enforced leave and reductions-in-force. In this matter, Employee is appealing the evaluation rating she received. There is no evidence in the record, and Employee has not alleged, that she was terminated as a result of the rating. Pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), Employee has the burden of proof on the issue of jurisdiction. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, 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". Employee was given the opportunity to meet this burden, but did not do so. *See*, OEA Rule 604.1, 46 D.C.Reg. 9299 (1999). I conclude that she did not meet her burden of proof on the issue of jurisdiction and that therefore the petition should be dismissed.

Employee's failure to respond to the Order provides an additional basis to dismiss this petition. In accordance with OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to the Order issued on November 8, 2011 which directed her to file her submission by no later than 4:00 p.m. on November 30, 2011. The Order was sent to Employee at the address listed as her home address in her petition, by first class mail, postage prepaid. It was not returned by the U.S. Postal Service and presumed to have been delivered to Employee. Employee did not seek an extension or contact the undersigned about the matter. The failure to prosecute an appeal includes the failure to submit "required documents after being provided with a deadline for such submission." *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). By failing to comply with the Order, which included a specific deadline, Employee failed to prosecute her appeal. I conclude that Employee's failure to prosecute her appeal is another basis for dismissing the petition.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge