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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JOSEPH THOMAS)	OEA Matter No. J-0149-04
Employee)	
)	Date of Issuance: June 10, 2005
v.)	
)	Lois Hochhauser, Esq.
METROPOLITAN POLICE DEPARTMENT)	Administrative Judge
Agency)	

Joseph Thomas, Employee
Charles Ramsey, Chief of Police

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition for appeal with the Office of Employee Appeals (OEA) on July 9, 2004, appealing the Agency's decision to suspend him. At the time the petition was filed, Employee was in a permanent status and had been employed with the Agency for approximately ten years.

The matter was assigned to this Administrative Judge on or about February 9, 2005. On February 10, 2005, she issued an Order advising the parties that the jurisdiction of this Office was at issue because it appeared from the language of the final Agency notice that Employee had only been suspended for five days with the remaining five days held in abeyance for one year. The parties were notified that this Office lacks jurisdiction over appeals of suspensions of less than ten days. Agency was directed to submit documentation regarding the number of days Employee was suspended. Employee was directed to submit legal and/or factual argument if he contended that a ten-day suspension and not a five-day suspension had been imposed. Agency's submission was due March 1, 2005 and Employee's response was due March 15, 2005. The parties were advised that the record would close on March 15, 2005,

unless they were notified to the contrary. Employee did not respond to the Order and the record closed on that date.

JURISDICTION

This Office's jurisdiction was not established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSIONS

The final notice of adverse action issued by the Agency on May 14, 2004 stated that Employee was being suspended for ten days. However on June 8, 2004, Agency's Assistant Chief issued a memorandum to Agency's Commander, Second District, that stated in pertinent part:

[T]he Chief of Police has decided that [Employee] will be suspended for ten workdays with five (5) held in abeyance for one year. This is the final agency action in this case.

Accordingly, [Employee] shall serve his 5-day suspension effective; Sunday, July 18, 2004 and shall continue until the total suspension has been served.

(emphasis in original).

Effective October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, this Office no longer has jurisdiction over appeals of suspensions of less than ten days in duration. Of particular relevance to this matter is §101(d) of OPRAA, which amended §1-606 of the D.C. Code in pertinent part as follows:

(1) D.C. Code §1-606.3(a) is amended as follows:

(a) An employeec may appeal a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . or a reduction in force. . . .

The jurisdiction of this Office is now limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade or suspensions of ten days or more; or reductions-in-force. OEA Rule 604.1, 46 D.C. Reg. 9299 (1999). The June 8 memorandum appears to amend the final Agency notice, so that effectively Employee was only suspended five days. Since October 21, 1998, this Office has consistently held that appeals involving suspensions of less than ten days are not within our jurisdiction. *See, e.g., Osekre v. Department of Human Services*, OEA Matter No. J-0080-00 (February 13, 2002), ___ D.C. Reg. ____ ().

Employees have the burden of proof on issues of jurisdiction. OEA Rule 629.2, 46 D.C. Reg. at 9317. In this instance, by failing to respond to the Order and contesting the Administrative Judge's interpretation that only a five-day suspension was imposed, Employee failed to meet his burden of proof on the issue of jurisdiction. For this reason this petition for appeal should be dismissed.

In addition, a petition for appeal may be dismissed with prejudice when a party fails to prosecute the appeal pursuant to OEA Rule 622.3, 46 D.C. Reg. at 9313. According to this Rule, failure to prosecute includes the failure to "[s]ubmit required documents after being provided with a deadline for such submission." Further, it is well-established that failure to respond to directives from this Office constitutes a failure to prosecute. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). In this case, Employee did not respond to the Order directing him to file a submission in support of his position regarding this Office's jurisdiction despite being notified that his response was due by March 15, 2005. He did not contact the Administrative Judge or otherwise request an extension of time to respond. His failure to respond constitutes a failure to prosecute this appeal and provides an additional ground for the dismissal of this petition.

ORDER

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

FOR THE OFFICE:



LOIS HOCHHAUSER, Esq.
Administrative Judge