THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
RAQUEL BEAUFORT,	)	
Employee	)	OEA Matter No. 1601-0051-11
	)	
v.	)	Date of Issuance: July 12, 2011
	)	
OFFICE OF THE ATTORNEY GENERAL,	)	
	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge

Raquel Beaufort, Employee *Pro-Se*
Pamela L. Smith, Esq., Agency Representative

INTIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 17, 2010, Raquel Beaufort ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District of Columbia Office of the Attorney General ("OAG" or "the Agency") adverse action of removing her from service. I was assigned this matter on or about April 14, 2011. According to the documents of record, Employee was a member of the American Federation of State, County, and Municipal Employees District 20 ("AFSCME"). Further, it is apparent to the undersigned that Employee position was covered by a collective bargaining agreement ("CBA") entered into between OAG and AFSCME.

After reviewing Employee's petition for appeal, I determined that there existed a question as to whether the OEA has jurisdiction over the instant appeal. Consequently, I issued an order on June 10, 2011, requiring Employee to address said issue in a written brief. To date, I have not received a response from Employee. After carefully reviewing the documents of record, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states that:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > 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.

OEA Rule 629.2, *id*., states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing."

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

According to a letter dated November 18, 2010, from Peter Nickles, then Attorney General for the District of Columbia, addressed to the Employee ("Termination Letter"). In the Termination Letter, Employee was informed that the effective date of her termination was November 19, 2010, The Termination Letter further provided in relevant part that:

> Under the terms of the collective bargaining agreement between the District Government and [AFSCME], you have the right to appeal my final decision by choosing **one of the following**: 1) the negotiated grievance procedure in the collective bargaining agreement, **or** 2) a petition for appeal with the [OEA]. **You may not do both**.
>
> **Emphasis added.**

On December 13, 2010, Employee filed a Step IV grievance of the final decision to remove her from service. *See* Agency Answer to Employee's Petition for Appeal at Tab 5. As was noted above, on December 17, 2010, Employee filed her petition for appeal with the Office of Employee Appeals.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] 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 [RIF]. . . .

Of note, D.C. Official Code § 1-616.52, provides as follows:

(a) An official reprimand or a suspension of less than 10 days may be contested as a grievance pursuant to § 1-616.53 except that the grievance must be filed within 10 days of receipt of the final decision on the reprimand or suspension.

(b) An appeal from a removal, a reduction in grade, or suspension of 10 days or more may be made to the Office of Employee Appeals. When, upon appeal, the action or decision by an agency is found to be unwarranted by the Office of Employee Appeals, the corrective or remedial action directed by the Office of Employee Appeals shall be taken in accordance with the provisions of subchapter VI of this chapter within 30 days of the OEA decision.

(c) A grievance pursuant to subsection (a) of this section or an appeal pursuant to subsection (b) of this section shall not serve to delay the effective date of a decision by the agency.

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter for employees in a bargaining unit represented by a labor organization. If an employee does not pay dues or a service fee to the labor organization, he or she shall pay all reasonable costs to the labor organization incurred in representing such employee.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to § 1-606.03, or the negotiated grievance procedure, but not both.

(f) An employee shall be deemed to have exercised their option pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure at such time as the employee timely files an appeal under this section or timely files a grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, whichever event occurs first.

Emphasis Added.

Based on the preceding, a District government employee, who is otherwise covered by the protections afforded to most District government employees under D.C. Official Code § 1-

606.03, may elect to have an Agency's action reviewed under the auspices of the OEA. However, some District government employees, like Employee herein, have other protection afforded to them pursuant to various collective bargaining agreements entered into by and between an employees' union and a District government agency.

In the instant matter, as referenced in the Termination Letter, initially, Employee had concurrent avenues available for reviewing the Agency's adverse action – file a petition with the OEA or file a grievance through the CBA, but not both. As the Termination Letter noted, the Employee had to choose which avenue in which to contest her removal. The Termination Letter warned Employee, in layman's terms, of the election of review as generally provided for pursuant to D.C. Official Code § 1-616.52 *et seq*. According to D.C. Official Code § 1-616.52 (e), an aggrieved employee cannot simultaneously review a matter before the OEA and through a negotiated grievance procedure. Also, D.C. Official Code § 1-616.52 (f), further provides that once an avenue of review, either through the OEA or through a negotiated grievance procedure, is first selected, then the possibility of review via the other route is closed. I find that the Employee initially opted to contest her removal under the auspices of the Collective Bargaining Agreement as noted in the Termination letter. Consequently, I further find that the OEA lacks jurisdiction over the instant matter[1].

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), reads in pertinent part as follows:

> 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:
>
> (b) Submit required documents after being provided with a deadline for such submission…

This Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Here, the Employee did not respond to my Order dated June 10, 2011. According to this order, his response was required in order to properly assess whether this Office may exercise jurisdiction over this matter. I find that Employee has not exercised the diligence expected of a petitioner pursuing an appeal before this Office and that this matter should be dismissed for her failure to prosecute. This represents another reason why this matter should be dismissed.

[1] Since this decision is predicated on the Office's lack of jurisdiction, I am unable to address the factual merits, if any, of the Employee's appeal.

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Eric T. Robinson, Esq.
Administrative Judge