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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
WILLIAM ROBERTS)	OEA Matter No. 1601-0098-14
Employee)	
v.)	Date of Issuance: January 29, 2015
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
Sara White, Esq., Agency Representative)	
William Roberts, Employee, <i>pro se</i>)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

William Roberts, Employee, filed a petition with the Office of Employee Appeals (OEA) on July 14, 2014, appealing a statement contained in the June 27, 2014 notice of termination issued to him by the District of Columbia Public Schools (DCPS), Agency. The effective date of the removal was July 15, 2014. At the time of the removal, Employee was employed as a teacher with Agency. The matter was assigned to me on December 2, 2014.

Upon review of the petition, I determined that this Office's jurisdiction was at issue since it appeared that Employee was not appealing his removal, but only the statement in the notice that Employee was not permitted to be "in or on the grounds" of any DCPS property, unless approved in advance. I issued an Order, advising Employee that this Office's jurisdiction was at issue and that employees have the burden of proof on all jurisdictional issues. I also noted that it did not appear that the statement in the letter that he was challenging was a matter over which this Office had jurisdiction. I directed him to submit a written response supporting his position regarding this Office's jurisdiction on January 8, 2015; and cautioned him that his failure to respond in a timely matter could be considered as concurrence that this Office lacks jurisdiction of the appeal and as a failure to prosecute. The Order stated that unless the parties were advised to the contrary, the record would close on January 8, 2015.

The Order was mailed to Employee by first class mail, postage prepaid, to the address that he listed in his petition. It was not returned to this Office as undelivered, and it is presumed to have been received by Employee in a timely manner. Employee did not file a response and did not seek an extension of time. The record in this matter closed on January 5, 2015.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should the petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Pursuant to OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), employees have the burden of proof on all issues of jurisdiction. 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 jurisdiction of this Office is set forth in D.C. Official Code §1-606.03(a) which states in pertinent part:

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]...

The directive issued by Agency to Employee in its removal letter that he could not be in or on DCPS property without prior clearance, is not included as a matter that can be appealed to this Office. Employee had the burden of proof on this issue of jurisdiction. I conclude that he did not meet his burden of proof and that this appeal should be dismissed for that reason.

There is an alternate basis for dismissing this appeal. 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 matter, the December 22 Order directed Employee to file a response by January 5, 2015. The Order was mailed to Employee at the address listed in his petition, by first class mail, postage prepaid. It was not returned to OEA, and is presumed to have been received by him in a timely manner. Employee did not file a response or contact the undersigned to request an extension of time to respond, despite being notified that his failure to respond could be considered as a failure to prosecute his appeal. The Administrative Judge concludes that Employee’s failure to respond to the Order in a timely manner constitutes a failure to prosecute his appeal which provides an additional basis to dismiss this matter. *See e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010).

In sum, for these reasons, the Administrative Judge concludes that Employee failed to meet his burden of proof on the issue of jurisdiction and also failed to prosecute his appeal. Both

reasons independently support the conclusion that this petition for appeal should be dismissed. The Administrative Judge concludes the petition should be dismissed.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge