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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 1601-0198-12
ABBIE GAIL WHITLEY,	)	
Employee	)	
	)	Date of Issuance: March 12, 2013
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	Sommer J. Murphy, Esq.
_____	)	Administrative Judge
Abbie Gail Whitley, Employee, <i>Pro Se</i>		
Sara White, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On August 13, 2012, Abbie Gail Whitley (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Schools’ (“Agency”) action of proposing to terminate her employment based on the following cause: “knowingly and willfully failing to fully and accurately report her earnings from the District of Columbia Public Schools when she applied for and received unemployment insurance benefits through the District of Columbia Department of Employment Services’ Office of Unemployment Compensation.”<sup>1</sup>

I was assigned this matter in February of 2013. On February 7, 2013, I ordered Employee to submit a brief addressing whether this Office may exercise jurisdiction over her appeal. According to Agency, Employee had not yet been terminated and was still employed pursuant to a “Last Chance Settlement Agreement.” Employee was required to submit a response on or before February 21, 2013. On March 4, 2013, I issued an Order for Statement of Good Cause to Employee based on her failure to submit a jurisdictional brief. Employee was given until March 11, 2013 to provide a statement of cause. As of the date of this Initial Decision, Employee has failed to submit a brief. The record is now closed.

<sup>1</sup> Agency’s Answer to Petition for Appeal (February 5, 2013).

## JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

## ISSUE

Whether OEA may exercise jurisdiction over Employee's appeal.

## FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether OEA has jurisdiction over Employee's appeal. 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]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, the burden of proof is defined under a 'preponderance of the evidence' standard. Preponderance of the evidence means "[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." This Office has no authority to review issues beyond its jurisdiction. Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>2</sup>

In this case, Employee received Agency's Proposed Notice of Termination August 7, 2012. The Notice stated that Employee's termination was to be effective on September 2, 2012. Agency subsequently opted to enter into a Last Chance Settlement Agreement with Employee in September of 2012, thus no final notice of termination was ever issued to Employee. Based on the foregoing, I find that no final agency action has been taken as required under D.C. Official Code § 1-606.03. Furthermore, I find that Employee has failed to meet her burden of proof on the issue of jurisdiction under OEA Rule 628.2, therefore I am unable to address the merits, if any, of Employee's appeal. Accordingly, this matter must be dismissed for lack of jurisdiction.

In addition, OEA Rule 621.3 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."<sup>3</sup> Failure of a party to prosecute an appeal includes, but is not limited to:

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<sup>2</sup> See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>3</sup> 59 DCR 2129 (March 16, 2012).

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.<sup>4</sup>

In this case, Employee was warned that the failure to submit a brief could result in sanctions as enumerated in Rule 621.3. Employee failed to submit a response to the March 4, 2013 Order. Employee also failed to provide a Statement of Good Cause on or before March 11, 2013 to explain her failure to submit a brief. Based on the foregoing, I find that Employee's lack of diligence in pursuing an appeal before OEA constitutes a failure to prosecute and serves as alternate grounds for the dismissal of this matter.

ORDER

It is hereby ORDERED that Employee's appeal is DISMISSED for lack of jurisdiction and failure to prosecute.

FOR THE OFFICE:

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SOMMER J. MURPHY, ESQ.  
ADMINISTRATIVE JUDGE

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<sup>4</sup> *Id.*