

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. 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:	)	
	)	OEA Matter No.: 1601-0285-10
VALENTI THOMPSON,	)	
Employee	)	
	)	Date of Issuance: October 31, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	Sommer J. Murphy, Esq.
_____	)	Administrative Judge
Valenti Thompson, Employee		
Cory Argust, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On March 25, 2010, Valenti Thompson (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Metropolitan Police Department’s (“Agency”) action of terminating her employment based on a charge of “conduct unbecoming of an officer.” The effective date of Employee’s termination was August 7, 2009.

I was assigned this matter in July of 2012. On July 27, 2012, I issued an Order convening a Status Conference to be held at this Office on August 29, 2012. On August 23, 2012, Employee submitted a request to have the Status Conference rescheduled for a later date. Agency also submitted a Consent Motion to Continue the Status Conference on August 27, 2012. A second Order was subsequently issued on August 29, 2012, rescheduling the Status Conference for September 24, 2012 at 2:00 p.m. Counsel for Agency appeared for the conference; however, Employee did not. On September 25, 2012, I issued an Order for Statement of Good Cause to Employee because she had failed to appear for the Status Conference. Employee was required to submit a statement to establish good cause on or before October 2, 2012. As of the date of this decision, Employee has failed to submit a statement of cause, thus this appeal will be decided based on the documents of record. The record is now closed.

JURISDICTION

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

ISSUE

Should Employee's appeal be dismissed?

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), 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 the 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." Under OEA Rule 604.2, an appeal filed with this Office must be filed within thirty (30) calendar days of the effective date of the appealed agency action.

On September 21, 2012, Agency filed a Motion to Dismiss for lack of jurisdiction. According to Agency, Employee filed her petition for appeal with this Office more than thirty (30) days after the effective date of her termination; therefore, OEA may not exercise jurisdiction over the instant matter. I agree with Agency's position and find that Employee did not file her petition for appeal with this Office in a timely manner. Agency's final notice of termination had an effective date of August 7, 2009. Employee; however, did not file a petition for appeal with this Office until March 25, 2012, more than thirty (30) days beyond the effective date of Agency's final action. Accordingly, this Office does not have jurisdiction to adjudicate the merits of Employee's claims, if any.

OEA Rule 621.3 further 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." Failure of a party to prosecute an appeal includes, but is not limited to.

- (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.

In this case, Employee was warned that the failure to submit a brief could result in sanctions as enumerated in Rule 621.3. Employee did not appear for the rescheduled Status Conference on September 24, 2012. Employee also failed to provide a Statement of Good Cause

on or before October 2, 2012 to explain her failure to appear at the conference. Based on the foregoing, I find that Employee's lack of diligence in pursuing her appeal before OEA constitutes a failure to prosecute and serves as an alternate ground for the dismissal of this matter.

ORDER

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

FOR THE OFFICE:

---

SOMMER J. MURPHY, ESQ.  
ADMINISTRATIVE JUDGE