

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JOEY MORRIS)	OEA Matter No. 1601-0096-12
Employee)	
)	Date of Issuance: February 7, 2014
v.)	
)	
D.C. DEPARTMENT OF PUBLIC WORKS)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
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Joey Morris, Employee, <i>Pro Se</i>		
Corey August, Esq., Agency Representative		

INITIAL DECISION

PROCEDURAL BACKGROUND

On May 9, 2012, Joey Morris, Employee, filed a petition with the Office of Employee Appeals (OEA), appealing the final decision of the D.C. Department of Public Works, Agency, terminating him from his position as a Sanitation Worker, effective May 11, 2012. The matter was assigned to me on September 16, 2013.

In his petition, Employee stated that he had consulted with his Union representative. However, he failed to complete Section E of the petition, which required him to state whether he had filed a grievance or other appeal regarding the same issue as the appeal before OEA. Therefore on November 29, 2013, I issued an Order directing Employee to file the completed Section E with OEA by 5:00 p.m. on December 13, 2013. In the Order, Employee was advised that this information was needed to establish the jurisdiction of this Office and that he had the burden of proof on the issue of jurisdiction. Employee was cautioned in the Order, that if he did not respond by the December 13, 2013 deadline, sanctions could be imposed without further notice. The parties were notified that unless they were advised to the contrary, the record would close on December 13, 2013. The Order was mailed, by first class mail, postage prepaid, to Employee at the address listed by Employee in his petition. He did not respond to the Order; and to date, he has not submitted anything to this Office or contacted the undersigned. The record closed on December 13, 2013.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

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.” Pursuant 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 case, an Order was issued on November 29, 2013, directing Employee to respond by December 13, 2013. The Order was sent to the address listed by Employee in his petition for appeal by first class mail, postage prepaid. It was not returned to this Office as undelivered, and is presumed to have been received by Employee in a timely manner. The Order cautioned Employee that if he failed to respond, sanctions could be imposed, including the dismissal of the appeal. He did not respond and did not contact the undersigned. The Administrative Judge concludes that Employee’s lack of diligence in pursuing an appeal before OEA constitutes a failure to prosecute. She further concludes that the appropriate sanction in this matter is the dismissal of this petition for appeal. *See e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

There is an additional basis upon which this petition should be dismissed. 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.” As noted above, Employee did not complete Section E of the petition which required him to state whether he filed a grievance with his Union or other form of appeal. He did state in another part of the petition, that he had consulted with his Union representative. In the November 29, 2013 Order, Employee was advised that he had the burden of proof on the issue of jurisdiction, and that the information provided in Section E was needed to establish this Office’s jurisdiction.

D.C. Official Code § 1-616.52(e) provides that employees may appeal a removal with OEA or with their collective bargaining representatives. The method chosen, according to D.C. Official Code § 1-616.52(f), is the one which an employee files first. In this instance, Employee’s failure to submit Section E of this petition means that essential information needed to establish this Office’s jurisdiction was not provided by Employee, since there is no information related to whether he had filed a grievance or other appeal prior to filing his appeal with OEA. Employee thus failed to meet his burden of proof regarding the jurisdiction of this

Office which establishes an independent basis upon which this petition should be dismissed.

ORDER

It is hereby:

ORDERED: The petition for appeal is dismissed.

FOR THE OFFICE:

LOIS HOCHHAUSER, Esq.
Administrative Judge