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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

| | | |
|-------------------------------------|---|--------------------------------|
| In the Matter of: |) | |
| |) | |
| TYONIA NEWMAN |) | OEA Matter No.1601-0188-11 |
| Employee |) | |
| |) | Date of Issuance: July 2, 2012 |
| v. |) | |
| |) | Lois Hochhauser, Esq. |
| DISTRICT OF COLUMBIA PUBLIC SCHOOLS |) | Administrative Judge |
| Agency |) | |
| |) | |

Ms. Tyonia Newman, Employee
Bobbie Hoye, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Ms. Tyonia Newman, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on July 26, 2011, appealing the decision of the District of Columbia Public Schools, Agency herein, to terminate her employment as a maintenance worker, effective July 29, 2011. According to her petition, at the time of her removal, Employee had a permanent appointment and was in career status.

The matter was assigned to me on May 5, 2012. Upon review of the documents, I noted that Employee stated in her petition that she had filed a grievance pursuant with her collective bargaining representative on July 18, 2011. On May 31, 2012, I issued an Order directing Employee to show good cause, by no later than June 18, 2012, as to why her appeal before this Office should not be dismissed based on her utilization of the grievance procedure prior to filing her appeal with OEA. The parties were advised that unless they were notified to the contrary, the record in this matter would close on that date. On or about June 16, 2012, the Order was returned to this Office by the United States Postal Service, marked "return to sender, not deliverable as addressed, unable to forward." The Order was sent to the address listed by Employee as her home address in her petition for appeal. There is nothing in the record indicating that Employee provided this Office with a change of address. Employee did not respond to the Order. The record closed on June 18, 2012.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

In this matter, Employee failed to prosecute her appeal. OEA Rule 621.3 provides:

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:

- (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.

Employee's failure to notify this Office of a change of address resulted in an Order being returned as "undeliverable." An employee's obligation to keep this Office informed of a current address is essential. Unless an employee can be contacted, there is no way for an appeal to proceed. Thus, an employee's obligation to keep this Office notified of a change of address is part of an employee's obligation to take "reasonable steps to prosecute" an appeal. The return of the May 31, 2012 Order, which has been mailed by first class mail, postage prepaid, to the address listed by Employee as her current address, represents a failure to prosecute her appeal. In addition, Employee was unable to meet a deadline established by the Order. Therefore, the Administrative Judge, in an exercise of "sound discretion" concludes that this matter should be dismissed based on Employee's failure to prosecute her appeal by failing to notify this Office of a change of address.

In addition, by failing to respond to the Order, Employee was unable to meet her burden of proof regarding this Office's jurisdiction. This Office's jurisdiction is conferred upon it by law. It is governed in this matter by D.C. Code Section 1-616.52 (2001) which states in pertinent part:

(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 [providing appeal rights to OEA] for employees in a bargaining unit represented by a labor organization.

(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 Section 1-606.03, or the negotiated

grievance procedure, but not both.

(f) An employee shall be deemed to have exercised their option (*sic*) pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, whichever occurs first.

Employees have the burden of proof on all issues of jurisdiction pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employees must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 629.1, as 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.” The information provided by Employee in her appeal is that she had filed a grievance with her collective bargaining representative on July 18, 2011, approximately eight days before filing her petition with OEA. The filing of a grievance pursuant to a collective bargaining agreement divests this Office of jurisdiction. Therefore, pursuant to D.C. Code Section 1-616.52, cited above, Employee did not meet her burden of proof on the issue of jurisdiction.

In sum, for the two reasons stated, the Administrative Judge concludes that the petition should be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge