

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Jerelyn Jones)	OEA Matter No. 2401-0053-10
Employee)	
)	Date of Issuance: January 27, 2012
v.)	
)	Senior Administrative Judge
D.C. Public Schools)	Joseph E. Lim, Esq.
Agency)	
)	

Sara White, Esq., Agency Representative
John Mercer, Esq., Employee Representative

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On October 21, 2009, Jerelyn Jones (Employee) filed a petition for appeal with this Office from Agency's final decision terminating her due to a Reduction-in-Force (RIF). The matter was assigned to the undersigned judge on December 2, 2011. I held a prehearing conference on December 28, 2011 and ordered the parties to submit a legal brief by the close of business on January 13, 2012. While Agency complied, Employee failed to do so. Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee failed to submit a brief. To date, Employee has failed to respond. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

FINDING OF FACTS, ANALYSIS AND CONCLUSION

According to the assertions made by the parties at the conference and the documents of record, the following is a recitation of the salient facts in this matter:

1. On September 10, 2009, the Chancellor of the District of Columbia Public Schools authorized a reduction-in-force (RIF) due to budgetary reasons as soon as possible in the 2010 fiscal year. See September 10, 2009 Memorandum from Michelle Rhee, Chancellor, District of Columbia Public Schools, to Kaya Henderson authorizing a Reduction-in-Force of School-Based Staff (RIF memo) attached to the District of Columbia Public Schools' Answer to Employee's

Appeal (Agency's Answer) at Tab 1.

2. The RIF occurred on October 2, 2009. *See* Letter to Employee from Michelle Rhee, Agency Chancellor, dated October 2, 2009, attached to Agency's Answer at Tab 4.

3. At the prehearing conference, Employee stated that no RIF occurred. However, she never submitted any evidence or basis for this assertion. When asked why she appealed a RIF if she believes that, in fact, none occurred. Employee simply stated that it would be one of her arguments.

4. For the October 2, 2009 RIF, Woodson Senior High School was determined to be a competitive area and ET-15 special education teachers constituted a competitive level.

5. Employee was an ET-15 special education teacher at Woodson Senior High School (Woodson) on October 2, 2009.

6. Ten other DCPS employees were ET-15 special education teachers at Woodson during the October 2, 2009 RIF.

7. Three ET-15 special education teacher positions at Woodson were identified as positions that would be subject to the RIF.

8. Ms. Jones was provided with one round of lateral competition and was ranked the third lowest of ET-15 special education teachers in her competitive area and competitive level. *See* Affidavit of Peter Weber and Competitive Level Documentation Forms attached to the District of Columbia Public Schools' Prehearing Statement at Tabs A and B, respectively.

9. Ms. Jones received specific written notice on October 2, 2009 that she would be separated from service with Agency effective November 2, 2009. *See* Letter to Jerelyn Jones from then Chancellor Michelle Rhee dated October 2, 2009, attached to the Agency's Answer at Tab 4.

10. At the conference, Employee stated that she does not believe this Office has jurisdiction over her appeal. When I asked why she filed her appeal with this Office if she believes that to be the case, Employee stated that she reserved the right to use that argument.

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) provides as follows:

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.

The employee was warned in each order that failure to comply could result in sanctions including dismissal. The employee never complied. Employee's behavior constitutes a failure to prosecute her appeal and that is sound cause for dismissal.

ORDER

It is hereby ORDERED that the petition in this matter is dismissed for failure to prosecute.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge