

DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the matter of:)	
)	
Beverlyn Glover)	OEA Matter No. J-0007-10
Employee)	
)	Date of Issuance: December 9, 2010
v.)	
)	
D.C. Public Schools(DOT))	Administrative Judge
Agency)	Wanda Jackson, Esq.

INITIAL DECISION

Employee filed a petition with the Office of Employee (OEA) on October 5, 2009, appealing Agency’s decision to remove her from her position as a Bus Monitor/Attendant, effective August 25, 2009. An initial review of Employee’s appeal indicated that a jurisdictional issue exists regarding whether Employee elected to pursue this matter through her collective bargaining agreement’s grievance and arbitration procedures. On May 4, 2010, Agency filed its answer to Employee’s Petition for Appeal and alleged that OEA lacked jurisdiction to adjudicate Employee’s Petition for Appeal and that it should be dismissed.

On October 18, 2010, I issued an order requesting that Employee submit a detailed statement of the reasons(s) why she believes this Office has jurisdiction over her appeal. Employee was advised that she has the burden of proof regarding issues of jurisdiction. Employee was further notified that failure to submit the requested statement would result in the dismissal of her appeal. Employee did not respond to my order and has not responded to date. The record is now closed.

JURISDICTION

The jurisdiction of this Office was not established

ISSUE

Should this petition for appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to OEA Rule 629.2, 46 D.C. Reg.9317 (1999) “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” Employee 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.”

This Office’s jurisdiction is established by law and governed by D.C. Official Code (2001) Section 1-616.52 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, be raised either pursuant to Section 1-601.03, or the negotiated grievance procedure, *but Not both.* (emphasis added).

Employee submitted a copy of the Step 2 grievance filed by AFSCME District Council 20 on her behalf with her petition for appeal. Therefore, Employee grieved this matter through the collective bargaining agreement before filing with OEA. By not responding to this judges October 18, 2010 Order, Employee has presented no evidence that would establish this Office’s jurisdiction over her appeal.

OEA Rule Section 622.3, 46 D.C. Reg. 9313 (1999) states that if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge may dismiss the action or rule for the appellant. Failure to prosecute includes, but is not limited to submitting required documents after being provided with a deadline for such submission. Although this appeal is being dismissed for lack of jurisdiction, Employee has also failed to prosecute her appeal by failing to submit a response to this judges October 18, 2010 order.

Therefore, based on the evidence of record, the applicable laws, rules and regulations, this judge concludes that Employee has not met her burden of establishing this Office’s jurisdiction over her appeal.

ORDER

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

Wanda L. Jackson, Esq.
Administrative Judge

Cc: Beverlyn Glover, Employee, Pro Se
Frank McDougald, Esq., Agency Representative