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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
SHONTE TULLOSS,	)	
Employee	)	OEA Matter No. 1601-0069-17
	)	
v.	)	Date of Issuance: February 6, 2018
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
Shonte Tulloss, Employee <i>Pro-Se</i>		
Lynette A. Collins, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On July 12, 2017, Shonte Tulloss (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or the “Agency”) adverse action of removing her from service. Employee’s last position of record was Teacher. On September 6, 2017, DCPS filed a Motion to Dismiss and Answer to Employee’s Petition for Appeal. In it, DCPS notes that Employee was first hired on August 11, 2014. As part of her onboarding, Employee was duly notified that she was required to obtain a valid license to teach no later than March 15, 2017. Regrettably, Employee failed to procure the proper licensure (to teach) within an acceptable time frame after hire. On April 3, 2017, Employee was notified that she was being removed from service due to her lack of proper licensure. The effective date of Employee’s removal was July 8, 2017. This matter was assigned to the Undersigned on or around October 3, 2017. However, at that time, the Undersigned was involved in a serious motorcycle accident and was out of the Office, recuperating, for an extended period of time. On December 28, 2017, after the Undersigned returned to the Office, an Order was issued whereby Employee was required to respond to Agency’s Motion to Dismiss. This Order required Employee to submit her response on or before February 1, 2018. To date, Employee has not filed a response with the OEA. After reviewing the documents of record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

## JURISDICTION

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

## ISSUE

Whether this matter should be dismissed.

## FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Agency argues that Employee was serving in an at-will position at the time of her removal and considering as much she did not enjoy the protections accorded to a number of District government employees by operation of D.C. Official Code § 1-606.03 *et al.* In support of its contention, Agency stated the following:

The [OEA] has consistently held that if an employee neglects to obtain the proper licensure or certification by the effective date of their removal, then they are deemed at-will employees. *Gizachew Wubishet v. District of Columbia Public Schools*, OEA Matter No. 1601-0106-06 (March 23, 2007); *Robin Suber v. District of Columbia Public Schools*, OEA Matter No. 1601-0107-07-R10 (January 22, 2010).

Moreover, it is well established in the District of Columbia that an employer may discharge an “at-will” employee “at any time and for any reason, or for no reason at all”... As an “at-will” employee, Employee does not have any job tenure or protection... Further, as an “at-will” employee, Employee has no appeal rights...<sup>1</sup>

I find that Agency’s rendition of the pertinent facts and law are an accurate reflection of what is salient in the instant matter. It is not subject to genuine dispute that Employee herein failed to obtain the proper licensure for her last position of record within the time frame allotted to her at the moment of her hire. Considering as much, I find that Employee was serving as an at-will employee when she was removed from service. Moreover, as DCPS aptly noted, at-will employees do not possess the right to appeal an adverse action before the OEA.<sup>2</sup>

It is regrettable that Agency elected to not grant this Employee, and others similarly situated, a further extension of time. However, Agency’s decision is beyond my jurisdiction to

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<sup>1</sup> See District of Columbia Public Schools’ Motion to Dismiss and Answer at 2 (September 6, 2017). Internal Citations Omitted.

<sup>2</sup> See *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). See also *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (DCDC 2006). As an “at will” employee, Employee did not have any job tenure or protection. See Code § 1-609.05 (2001). Further, as an “at will” employee, Employee had no appeal rights with this Office. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991).

set aside, based upon Agency's decision regarding how it will address the continued non licensure status of its "at will" employees who were nearing, but still had not completed all of the certification requirements. Hopefully, Employee will soon obtain all of the necessary credentials and a license, so that she can resume the important mission of educating the youth of the District of Columbia.

#### Failure to Prosecute

OEA Rule 621.3, *id.*, states 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.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents. *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). Here Employee did not file her response to Agency's Motion to Dismiss and Answer. I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's inaction presents another valid basis for dismissing the instant matter.

#### ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.  
Senior Administrative Judge