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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DANNY WHITE,)	
Employee)	OEA Matter No. J-0059-11
)	
v.)	Date of Issuance: July 11, 2011
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS – DIVISION)	
OF TRANSPORTATION,)	
Agency)	ERIC T. ROBINSON, Esq.
_____)	Administrative Judge
Danny White, Employee <i>Pro-Se</i>		
W. Iris Barber, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 13, 2011, Danny White (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) appealing the District of Columbia Public Schools – Division of Transportation (“the Agency”) hiring procedures relative to his job application for an Assistant Manager position within the Agency. I was assigned this matter on or about April 14, 2011. After reviewing the case file and the documents of record, I issued an Order dated June 10, 2011, wherein I questioned whether the OEA may exercise jurisdiction over the instant matter. Employee was required to respond to this order on or before July 1, 2011. To date, Employee has not responded to my order. After reviewing the other documents of record, along with all of the other relevant facts and circumstances, I have determined that no further proceedings in this matter are warranted. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Should this matter be dismissed for lack of jurisdiction?

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states that:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

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.

OEA Rule 629.2, *id.*, states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing."

ANALYSIS AND CONCLUSION

In Section C Number 17 of his petition for appeal, Employee states, in pertinent part, "I want to appeal the **hiring procedures** and final decision for a recent job I **applied** for as an Assistant Manager." Emphasis Added. I find that Employee's petition for appeal is an appeal of the Agency's hiring practices and procedures. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

This Office has no authority to review issues beyond its jurisdiction. See *Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ (); Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. See *Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ (); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ (); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995), __ D.C. Reg. __ ().

The jurisdiction of this Office is expressly limited to performance ratings that result in

removals; final agency decisions that result in removals, reductions in grade; suspensions or enforced leave of ten days or more; or reductions in force. *See* OEA Rule 604.1, Based on the preceding statute, OEA rule, and related case law, I find that the OEA does not have jurisdiction to adjudicate appeals of an District government agency's hiring process. Consequently, I conclude that I must dismiss this matter for lack of jurisdiction.

OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), reads in pertinent part 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:

- (b) Submit required documents after being provided with a deadline for such submission...

This Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents. *See, e.g., Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985). Here, the Employee did not respond to my Order dated June 10, 2011. According to this order, his response was required in order to properly assess whether this Office may exercise jurisdiction over this matter. I find that Employee has not exercised the diligence expected of a petitioner pursuing an appeal before this Office and that this matter should be dismissed for her failure to prosecute. This represents another reason why this matter should be dismissed

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge