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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No. J-0004-25
EMPLOYEE ¹)	
Employee)	Date of Issuance: March 24, 2025
v)	
DISTRICT OF COLUMBIA DEPARTMENT)	LOIS HOCHHAUSER, Esq.
OF HOUSING AND COMMUNITY)	Administrative Judge
DEVELOPMENT)	
Agency)	
Employee, <i>Pro Se</i>		
Julia Wiley, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 4, 2024, Employee filed a petition with the District of Columbia Office of Employee Appeals (“OEA”), appealing the decision of the District of Columbia Department of Housing and Community Development (“Agency”) to terminate her employment, effective September 6, 2024.

By letter dated October 4, 2024, Sheila Barfield, Esq., OEA Executive Director, notified Colleen Green, Agency Director, of the appeal and of the November 3, 2024 deadline for Agency to file its answer. On or about November 3, 2024, this Administrative Judge (“AJ”) was appointed to hear this matter. On November 8, 2024, Agency, through its representative, contacted the AJ by email, and asked for permission to file Agency’s answer although the filing deadline had passed. The representative explained that her mother had died the previous month, and although she had recently returned to work, she had missed the filing deadline. The AJ directed the representative to contact Employee and request her consent. Employee responded to the request on November 13, 2024, objecting to the request.

On November 13, 2024, the AJ notified the parties by email that Agency was to file its Answer by November 26, 2024, but that she would not review the Answer until she reached a decision. She stated that Employee could supplement or revise her objections by November 19, 2024. Employee filed her response on November 18, 2024, reiterating the objections stated in her earlier email. On November 20, 2024, the AJ notified the parties that after considering the request and objections, she granted Agency’s request. She directed Agency to include a chronology of its

¹ This Office does not identify employees by name in its published decisions.

request with its pleading. Agency filed its Answer with the chronology on November 26, 2024. In its Answer, Agency argued that this Office lacked jurisdiction since Employee was in probationary status at the time of the termination.

In the Order issued on January 27, 2025, the AJ stated that although Employee had identified herself as holding permanent status in her Petition for Appeal (“PFA”), Agency had submitted documents supporting its position that Employee was in probationary status at the time of termination. The AJ stated that this raised the issue of jurisdiction. She informed Employee that employees carry the burden of proof on issues of jurisdiction, and must meet the burden of proof by a preponderance of evidence. The AJ directed Employee to submit legal and/or factual arguments supporting her position regarding this Office’s jurisdiction by 5:00 p.m. on February 17, 2025. The parties were notified that the record would close at 5:30 p.m. on February 17, 2025, unless they were notified to the contrary. The Order was sent to Employee by first class mail, postage prepaid, at the address listed by Employee in the PFA. It was not returned to this Office as undeliverable. Employee did not file a response and did not contact the AJ to request an extension; and the record closed at the stated time.

JURISDICTION

The jurisdiction of this Office was at issue in this matter.

ISSUE

Should this appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Although Employee identified her status as permanent in the PFA, she stated that she held the position between May 20, 2024 and September 6, 2024. These dates are consistent with the dates Agency provided in documents it submitted to this Office supporting its position that Employee held probationary status at the time of termination. Agency’s April 29, 2024 letter offering Employee the position of Information Technology Specialist, for example, stated that her one year probationary period would begin on May 20, 2024. The Notification of Personnel Action dated May 24, 2024, identified Employee’s status as “Career-Probation.” In addition, Agency’s August 23, 2024 letter to Employee, titled “Termination during Probationary Period” identified Employee’s hiring date as May 20, 2024 and stated that Agency would end her “probationary period and her service...effective September 6, 2024.”

The jurisdiction of this Office is established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Law 2-139; D. C. Official Code § 1-601.01 et seq. (2016 Repl.. and 2019), as amended by the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124. The threshold issue in this matter is one of jurisdiction. This Office has no authority to hear matters beyond its jurisdiction. *See, e.g., Banks v. District of Columbia Public Schools*, OEA Matter 1602-0030-90, *Opinion and Order* (September 30, 1992).

Section 227.4 of Title 6-B of the District of Columbia Personnel Regulations states that separations from service “during a probationary period is neither appealable nor grievable.” This

Office has long maintained that an employee removed while in probationary status cannot appeal the removal to this Office. *See, e.g., Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order* (December 6, 2010). Employee held her position between May 20, 2024 and September 6, 2024, and therefore had not completed her one year probationary period at the time of termination.

Employees carry the burden of proof on issues of jurisdiction, and must meet this burden by a preponderance of evidence. *See*, OEA Rules 631.1 and 621.2. The Order issued on January 27, 2025 stated, in pertinent part, that Employee's failure to file a response could be considered as concurring that this Office lacks jurisdiction of this appeal due to her probationary status. The Order was mailed to Employee at the address listed in her appeal by first class mail, and was not returned to this Office. It is presumed to have been received by Employee in a timely manner. Employee did not respond to the Order and did not contact the AJ to request an extension. Employee's failure to respond to the Order may be considered as concurrence that this Office lacks jurisdiction to hear this appeal, based on Employee's probationary status at the time of termination. In any event, the AJ concludes that this appeal should be dismissed based on Employee's failure to meet the burden of proof on the issue of jurisdiction.

There is an alternative basis for dismissing this appeal. OEA Rule 624.3 states in pertinent part:

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...

The Order issued on January 27, 2025 notified Employee that her failure to file a timely response could be deemed as a failure to prosecute, and could result in dismissal of the appeal without further notice. Employee was directed to file legal and factual argument in support of her position that this Office had jurisdiction of this matter by February 17, 2025. Employee failed to file a response, and did not contact the AJ to request an extension. The AJ concludes that Employee failed to take "reasonable steps" to prosecute this appeal, and in the "exercise of sound discretion," the AJ imposes the sanction of dismissal of this appeal.

ORDER

It is hereby:

ORDERED: This Petition for Appeal is dismissed.

FOR THE OFFICE:



Lois Hochhauser, Esq.
Administrative Judge