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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DEBORAH JOHNSON	)	OEA Matter No. J-0022-11
Employee	)	
	)	Date of Issuance: April 18, 2011
v.	)	
	)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA OFFICE OF THE	)	Administrative Judge
STATE SUPERINTENDENT OF EDUCATION	)	
Agency	)	
_____	)	
Deborah Johnson, Employee <i>pro se</i>	)	
Raeshawn Crosson-Settles, Agency Representative	)	

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Deborah Johnson, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on November 15, 2010, appealing the final decision of the District of Columbia Office of the State Superintendent of Education, Agency herein, to remove her from her position as Assistant Terminal Manager, effective November 16, 2010. In her petition, Employee identified herself as having career and permanent status. However, in its October 29, 2010 letter to Employee notifying her of her impending removal, Agency stated that Employee had been “appointed non-competitively without job tenure” on March 25, 1991 and had no appeal rights.

The matter was assigned to me on March 7, 2011. In the Order I issued on that date, I noted that Agency had not yet responded to OEA’s directive of November 16, 2010 directing it to file its answer to the petition by December 16, 2010. I also noted that the copy of this directive that had been mailed by OEA to Employee at the address listed on her petition had been returned to OEA by the U.S. Postal Service (USPS) as “undeliverable.” I directed Employee to respond to the jurisdictional issues regarding her status at the time of her removal, and to provide this Office with her current mailing address. I directed Agency to submit its response, specifically addressing the jurisdictional issues and provide support for its contention that Employee had been “appointed non-competitively without job tenure” on March 25, 1991. I directed that both submissions be filed by no later than 4:00 p.m. on March 25, 2011, and notified the parties that failure to comply with this Order in a timely

manner could result in the imposition of sanctions, including, in the Employee's case the dismissal of the petition without further notice. I notified the parties that the record would close at 4:15 p.m. on March 25, 2011 unless they were notified to the contrary.

This Order was mailed to Employee by first class mail, postage prepaid, to the address listed by Employee in her petition for appeal. It was returned to OEA by USPS and marked "moved left no address, unable to forward, return to sender" on March 10, 2011. Agency responded to the petition, by requesting a continuance.<sup>1</sup> The record closed at 4:15 p.m. on March 25, 2011.

### JURISDICTION

The jurisdiction of this Office was not established.

### ISSUE

Should this petition be dismissed?

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) states:

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.

In this matter, several correspondences, including the March 7, 2011 Order, were mailed by first class mail, postage prepaid, to Employee at the address she listed in her petition. They were returned to OEA by USPS as undeliverable. The most recent one included the notation that Employee moved and left no forwarding address. OEA Rule 622.3, cited above, provides that a failure to prosecute an appeal includes a failure by a party to inform OEA of a change of address which results in correspondence being returned. Two correspondences from this Office, including the March 7, 2011 Order, were returned to OEA by USPS as either not deliverable or because Employee no longer resided at the address she listed in her petition and had left no forwarding address with USPS. The record does not contain any oral or written communication from Employee notifying this Office of her change of address. Employee's failure to notify this Office of her change of address resulted in

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<sup>1</sup> Since Employee's copy of the Order had already been returned to OEA by the time Agency submitted its motion to extend, I did not respond to the motion because it seemed unnecessary for Agency to respond to the Order when it was likely that this matter would be dismissed. The motion is now denied as moot.

the return of two items of correspondence, including the March 7, 2011 Order, being returned to this Office. I conclude that Employee failed to prosecute her appeal by failing to notify this Office of her change of address.

Employees have the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee was directed to present legal or factual argument to establish this Court's jurisdiction in view of Agency's contention that she was not entitled to appeal her removal to this Office because of she lacked job tenure. Due to Employee's failure to respond, she could not meet her burden of proof on this issue. Thus, this matter is also dismissed based on Employee's failure to meet her burden of proof on the issue of jurisdiction.

ORDER

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

FOR THE OFFICE:

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LOIS HOCHHAUSER, ESQ.  
Administrative Judge