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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
NINA WILSON,	)	
Employee	)	OEA Matter No. 1601-0364-10
	)	
v.	)	Date of Issuance: October 19, 2012
	)	
DISTRICT OF COLUMBIA	)	STEPHANIE N. HARRIS, Esq.
PUBLIC SCHOOLS,	)	Administrative Judge
Agency	)	
_____	)	

Nina Wilson, Employee *Pro-Se*  
W. Iris Barber, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On August 17, 2010, Nina Wilson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate her from her position as a Librarian. In response to Employee’s Petition for Appeal, Agency submitted its Answer on September 23, 2010.

I was assigned this matter on July 17, 2012. On July 31, 2012, I ordered (“July 31<sup>st</sup> Order”) the parties to submit briefs addressing whether OEA had jurisdiction in this matter in response to Agency’s claim that Employee was in probationary status at the time of her termination. Employee’s brief was due on or before August 10, 2012 and Agency’s brief was due on or before August 21, 2012. No response was received from Employee as directed by the July 31<sup>st</sup> Order. On August 10, 2012, Employee requested an extension of time. The undersigned granted Employee’s request and set a new brief submission deadline of August 30, 2012. Employee did not submit her brief by the prescribed deadline and on September 18, 2012, the undersigned issued an Order for Statement of Good Cause (September 18<sup>th</sup> Order”) wherein Employee was required to submit a statement explaining her failure to adhere to the deadline as was previously prescribed. Moreover, Employee was also directed to submit her legal brief. Employee’s response was due on or before September 28, 2012. As of the date of this decision, OEA has not received a response from Employee as requested in the aforementioned Orders. Agency timely submitted its brief on September 19, 2012. After reviewing the record, 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

Whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

In its Answer, Agency contends that Employee was not a permanent employee at the time of her separation and requests that this matter be dismissed for lack of jurisdiction. Agency submitted personnel information showing that Employee worked for less than one year.<sup>1</sup> This contention raised a jurisdictional issue in this matter.

This Office’s jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (“CMPA”), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

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<sup>1</sup> Agency Answer, Tab 6 (September 23, 2010).

This Office has no authority to review issues beyond its jurisdiction.<sup>2</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>3</sup> Employee was given an opportunity to address the jurisdictional issue in this matter, but failed to do so. Agency submitted personnel information showing that the length of time between Employee's start date (August 17, 2009) and termination date (August 13, 2010) was less than one year.<sup>4</sup> Additionally, in its brief, Agency submitted Employee's last SF-50, which corroborates that Employee was employed for less than a year.<sup>5</sup>

Chapter 8, §814.3 of the District Personnel Manual states that a termination during the probationary period cannot be appealed to this Office. Moreover, this Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.<sup>6</sup> Thus, I find that this Office lacks jurisdiction in this matter because the record shows that Employee was still in probationary status at the time of her removal.

Employee has the burden of proof in issues of jurisdiction. Employee's failure to provide a response to the July 31<sup>st</sup> and September 18<sup>th</sup> Orders may be considered as an admission that this Office lacks jurisdiction in this matter. Consequently, I find that Employee has failed to meet her burden of proof in this matter.

Additionally, OEA Rule 621.1<sup>7</sup> grants an AJ the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal.<sup>8</sup> In addition to OEA Rule 621.3(b)-(c), this Office has consistently held that the failure to prosecute an appeal includes failing to submit required documents after being provided with a deadline for such submission.<sup>9</sup> Both the July 31<sup>st</sup> and September 18<sup>th</sup> Orders advised Employee that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. Therefore, the undersigned concludes that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Accordingly, the undersigned finds that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and this represents another reason why this appeal should be dismissed.

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<sup>2</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>3</sup> See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

<sup>4</sup> Agency Answer, Tab 6 (September 23, 2010).

<sup>5</sup> Agency Brief, Exhibit A (September 19, 2012).

<sup>6</sup> See, e.g., *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011).

<sup>7</sup> 59 DCR 2129 (March 16, 2012).

<sup>8</sup> See OEA Rule 621.3.

<sup>9</sup> See also *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge