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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
MIYA RASPBERRY)	OEA Matter No. J-0033-14
Employee)	
)	Date of Issuance: February 18, 2014
v.)	
)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA DEPARTMENT OF)	Administrative Judge
YOUTH REHABILITATION SERVICES)	
Agency)	
)	

Miya Raspberry, Employee, *Pro Se*
Kathleen Liu, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Miya Raspberry, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on December 18, 2013, appealing the decision of the District of Columbia Department of Youth Rehabilitation Services, Agency herein, to remove her from her position as a Youth Development Representative, effective November 22, 2013. The matter was assigned to me on January 13, 2014.

The final notice issued by Agency terminating Employee, stated that she was in probationary status at the time of her removal. In her petition, Employee stated that she had worked for the D.C. Government for three months. Therefore, by Order dated January 27, 2014, I directed Employee to address the matter of her status as a probationary employee and this Office's jurisdiction. She was advised that she had the burden of proof on the issue of jurisdiction. She was notified that the deadline for filing her submission with OEA was 4:00 p.m. on February 11, 2014. She was further notified that her failure to comply with the Order could provide an additional basis for dismissing the petition based on her failure to prosecute the matter and/or be considered as concurrence regarding this Office's lack of jurisdiction. The parties were advised that unless they were notified to the contrary, the record in this matter would close on February 11, 2014. The Order was sent to Employee by first class mail, postage prepaid, at the address she listed on her petition for appeal. The Order was not returned to OEA and is presumed to have been received by Employee in a timely manner. Employee did not respond to the Order. The record closed on February 11, 2014.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

OEA Rule 621.1, 59 DCR 2129 (March 16, 2012) authorizes the Administrative Judge “in the exercise of sound discretion” to impose sanctions upon parties as appropriate. OEA Rule 621.3(b) states that failure to prosecute an appeal includes, but is not limited to, a party’s failure to submit required documents after being provided with a deadline for such submission. This Office has consistently held that a petition for appeal may be dismissed for failure to prosecute when a party fails to submit required documents for which a deadline has been imposed. *See, e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010). In this matter, Employee failed to file a response by the ordered deadline. In the Order, Employee was notified that her failure to comply could result in the imposition of sanctions, including the dismissal of the petition based on her failure to prosecute the matter. The Order was sent to Employee by first class mail, postage prepaid, to the address listed by Employee in her petition. It was not returned to OEA, and is presumed to have been received by Employee in a timely manner. Based on Employee’s violation of OEA Rule 621.3, the Administrative Judge, in an “exercise of sound discretion” concludes that this petition for appeal should be dismissed for failure to prosecute the appeal.

There is an additional ground upon which this petition may be dismissed. Pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), Employee has the burden of proof on all issues of jurisdiction. Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 629.1, as 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.” Employee’s employment status, which is a basis for this Office’s jurisdiction, is an issue over which Employee has the burden of proof.

§814.3 of the District Personnel Manual (DPM) provides that a termination during a probationary period cannot be appealed unless it comes within a protected category. §813.2 of the DPM states that, with some exceptions not relevant to this matter, the probationary period lasts for one year. According to the documents submitted by Employee, she had only been employed by the D.C. Government and in her position for three months at the time of her removal, and thus was in probationary status. An appeal to this Office by an employee serving in a probationary status must therefore be dismissed for lack of jurisdiction. *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). Employee was notified that her failure to respond to the January 27, 2014 Order could be viewed as an admission that this Office lacked jurisdiction to hear this matter. Employee had the

burden of proof on the issue of jurisdiction, and she failed to meet this burden. Thus, an additional basis for dismissing this petition is Employee's failure to meet her burden of proof on the issue of jurisdiction of this Office to hear this matter.

ORDER

It is hereby:

ORDERED: The petition for appeal is dismissed.

FOR THE OFFICE:

LOIS HOCHHAUSER, Esq.
Administrative Judge