

Notice: This decision is subject to formal revision before publication in the *District of Columbia Register*. Parties are requested to notify the Office Manager of any formal errors in order that corrections may be made prior to publication. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

| | | |
|---|---|---------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| LEROY HANDY |) | OEA Matter No. J-0159-10 |
| Employee |) | |
| |) | Date of Issuance: June 16, 2010 |
| |) | |
| |) | Lois Hochhauser, Esq. |
| D.C. DEPARTMENT OF TRANSPORTATION |) | Administrative Judge |
| Agency |) | |
| _____ |) | |
| Leroy Handy, Employee pro se |) | |
| James Fisher, Esq., Agency Representative |) | |

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Leroy Handy, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on November 23, 2009, stating that the document submitted to the D.C. Department of Transportation, Agency herein, that resulted in his resignation, was “falsified”. Agency contends that it handled the matter properly and that the petition should be dismissed.

This matter was assigned to me on May 13, 2010. On May 17, 2010, I issued an Order directing Employee to present factual or legal argument why this Office should hear this matter based on the status of his resignation and the delay in filing the petition. Employee was informed that his submission had to be filed with OEA by 4:00 p.m. on June 4, 2010, and that if he did not file it in a timely manner, the petition would be dismissed without further notice.¹ The parties were advised that the record would close on June 4, 2010 at 4:15 p.m. unless they were notified to the contrary. Employee did not respond to the Order, and the record closed on June 4, 2010.

¹ A copy of the Order was sent to Clifford Lowery, Union representative because, although he was not listed as a representative by Employee, Agency listed him on its certificate of service and provided him with a copy of its submission. In the Order, Employee was notified that his representative needed to enter his or her appearance by 4:00 p.m. on June 4, 2010. No entry of appearance was filed. Therefore, this Initial Decision is being sent only to Employee and the Agency representative.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this matter be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

On November 10, 2006, Agency received a hand-written letter stating “I Leroy Handy [am] giving a letter of resignation, effective November 11, 2006. Thank you. Leroy Handy”. The letter stated that copies were provided to “David Flynn-Superintendent” and “Human Resources”. Based on this document, Agency issued a Notification of Personnel Action, Standard Form 50, separating Employee, effective November 11, 2006. In his appeal, Employee states that the document was “falsified” and that he is entitled to reinstatement.

This Office does not have jurisdiction of appeals involving voluntary resignations. OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) states that employees “have the burden of proof as to issues of jurisdiction”. OEA Rule 629.1 provides that the burden must be met by a “preponderance of the evidence” which is defined that 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. There is a presumption that Employee’s decision to resign is voluntary. *Christie v. United States*, 518 F.2d 584 (Cl. Ct. 1975). The presumption, however, can be rebutted. Similarly, timeliness is a jurisdictional issue over which Employee must carry the burden of proof. OEA Rule 604.2, 46 D.C. Reg. at 9299 requires appeals to be filed “within thirty (30) days of the effective date of the appealed agency action”. This time limit is mandatory and jurisdictional in nature. *See, e.g., District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991) and *King v. Department of Corrections*, OEA Matter No. T-0031-01, *Opinion and Order on Petition for Review* (October 16, 2002), D.C. Reg. ____ (). But there are some instances where the time requirement can be waived. *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003), ____ D.C. Reg. ____ ().

Employee was given the opportunity to present legal and/or factual arguments to support his positions on the issues of the resignation and timeliness. However, he did not respond to the Order, despite being notified that if he failed to respond, the appeal would be dismissed without further notice. The Administrative Judge concludes that Employee did not meet his burden of proof on the issue of jurisdiction.

In addition, this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute an appeal. Pursuant to OEA Rule 622.3, 46 D.C. Reg.

9313 (1999), failure to prosecute includes failure to “[s]ubmit required documents after being provided with a deadline for such submission.” *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee failed to respond to the May 17th Order although he was given a deadline and cautioned that failure to respond would result in the dismissal of the petition. Employee’s failure to prosecute this matter provides an additional ground for dismissing the petition.

ORDER

It is hereby

ORDERED: This petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge