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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: J-0052-13
VERNON EDWARDS,)	
Employee)	
)	Date of Issuance: March 15, 2013.
v.)	
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Vernon Edwards, Employee, <i>Pro Se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 8, 2013, Vernon Edwards (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Office of the State Superintendent of Education’s (“Agency”) action of terminating his employment based on the following cause: “failure to follow instructions or observe precautions regarding safety; failure to carry out assigned task; careless or negligent work habits (falling asleep while driving).”¹ The effective date of Employee’s termination was June 7, 2010.

I was assigned this matter in February of 2013. On February 20, 2013, I ordered Employee to submit a brief addressing whether this Office may exercise jurisdiction over his appeal. Employee was required to submit a response on or before March 6, 2013. On March 7, 2013, I issued an Order for Statement of Good Cause to Employee based on his failure to submit a jurisdictional brief. Employee was given until March 14, 2013 to provide a statement of cause. As of the date of this Initial Decision, Employee has failed to submit a brief. The record is now closed.

¹ Petition for Appeal (February 8, 2013).

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether OEA may exercise jurisdiction over Employee's appeal.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether OEA has jurisdiction over Employee's appeal. 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]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, the burden of proof is defined under a 'preponderance of the evidence' standard. Preponderance of the evidence means "[t]hat 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."

This Office has no authority to review issues beyond its jurisdiction. Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.² According to DCMR § 604.2, [a]n appeal filed pursuant to § 604.1 must be filed within thirty (30) calendar days of the effective date of the appealed agency action.

In this case, Employee received Agency's Proposed Notice of Termination on May 24, 2010. The Notice stated that Employee's termination was to be effective on June 7, 2010. The Final Notice of Termination provided that "[y]ou also have the right to appeal this action to the District of Columbia Office of Employee Appeals. Attached to this notice are copies of the applicable Personnel Regulations, the rules of the Office of Employee Appeals, and a copy of an OEA Petition for Appeal."³ However, Employee did not file a Petition for Appeal with this Office until February 8, 2013, more than thirty (30) months after the effective date of his termination. Based on the foregoing, I find that Employee has failed to meet his burden of proof on the issue of jurisdiction under OEA Rule 628.2 because the Petition for Appeal was filed in an

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

³ Final Notice of Termination (June 7, 2010).

untimely manner. Therefore, I am unable to address the merits, if any, of Employee's appeal. Accordingly, this matter must be dismissed for lack of jurisdiction.

In addition, OEA Rule 621.3 provides that "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."⁴ Failure of a party to prosecute an appeal includes, but is not limited 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.⁵

In this case, Employee was warned that the failure to submit a brief could result in sanctions as enumerated in Rule 621.3. Employee failed to submit a response to the February 20, 2013 Order. Employee also failed to provide a Statement of Good Cause on or before March 14, 2013 to explain his failure to submit a brief. Based on the foregoing, I find that Employee's lack of diligence in pursuing an appeal before OEA constitutes a failure to prosecute and serves as alternate grounds for the dismissal of this matter.

ORDER

It is hereby ORDERED that Employee's appeal is DISMISSED for lack of jurisdiction and failure to prosecute.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

⁴ 59 DCR 2129 (March 16, 2012).

⁵ *Id.*