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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
PAMELA DIXON)	OEA Matter No. J-0160-12
Employee)	
)	Date of Issuance: November 8, 2012
v.)	
)	Lois Hochhauser, Esq.
OFFICE OF THE STATE SUPERINTENDENT)	Administrative Judge
OF EDUCATION)	
Agency)	

Pamela Dixon, Employee
Hilliary Hoffman-Peak, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Pamela Dixon, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on July 23, 2012, appealing the decision of the Office of the State Superintendent of Education, Agency herein, to terminate her employment as a Bus Attendant. I was assigned the matter on August 27, 2012.

Employee’s submissions included a letter dated June 14, 2012, in which Agency proposed the removal. It also contained a letter dated July 2, 2012 from Agency’s Director of Human Resources placing Employee on administrative leave with pay “until further notice” based on her request for an administrative review. The file did not contain any documentation that Employee was removed from her position.

On October 10, 2012¹, I issued an Order directing Employee to present documentation and/or argument to support her position that she had been terminated. The Order advised her that employees have the burden of proof on all issues of jurisdiction and that this was a jurisdictional issue. Employee was notified that her response was due by 4:00 p.m. on October 25, 2012. The parties were

¹ An earlier Order, issued on August 27, 2012, was sent to the wrong address so the Order was issued again and sent to the correct address.

advised that the record would close at 5:00 p.m. on October 25, 2011 unless they were notified to the contrary. Employee did not respond to the Order, and the record closed on October 25, 2012.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

This Office's jurisdiction is conferred upon it by law. Pursuant to D.C. Official Code §1-606.03(a), this Office's jurisdiction is limited to appeals involving performance ratings that result in removals, final agency decisions that result in removals, reductions in grade, suspensions of ten days or more, placement on enforced leave and reductions-in-force. Although Employee contended that she was removed from her position, the documents in the file established that Agency issued a notice proposing to remove Employee from her position on June 14, 2012; but that on July 2, 2012, it placed her on administrative leave with pay "until further notice" based on her request for an administrative review. The record does not contain any information or documentation that Employee was, in fact, removed from her position.

Pursuant OEA Rule 628.2, 59 D.C. Reg. 2129, Employee has the burden of proof on issues of jurisdiction. Employee must meet this burden by a "preponderance of the evidence" defined in OEA Rule 621.1, 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 was given the opportunity to meet this burden of proof on this issue, but did not do so. There is no evidence that Employee was removed from her position. Thus, there is no basis to support this Office's jurisdiction.

Employee's failure to respond to the Order provides an additional basis to dismiss this petition. OEA Rule 621.3(b) provides that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. The failure to prosecute an appeal includes the failure to meet a deadline for submitting a document. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). In this matter, Employee did not respond to the Order of October 11, 2012, which directed that her submission be filed by October 25, 2012. Employee did not seek an extension or contact this Office about the matter. The Order was sent to Employee at the address listed as her home address in her petition, by first class mail, postage prepaid. It was not returned by the U.S. Postal Service and is deemed to have been received by Employee in a timely manner.

ORDER

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

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge