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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
ANDRE WILDER)	
Employee)	OEA Matter No. 1601-0083-12
)	
v.)	Date of Issuance: December 3, 2013
)	
D.C. DEPARTMENT OF TRANSPORTATION)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
)	
_____ Andrew Wilder, Employee <i>Pro se</i>		
Nana Bailey-Thomas, Agency's Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 28, 2012, Andrew Wilder, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the D.C. Department of Transportation, Agency, to terminate him from his position as a Traffic Control Officer, effective March 15, 2012. This matter was assigned to me on or about September 13, 2013.

In his petition, Employee identified himself as a term employee. Therefore, on September 23, 2013, I issued an Order notifying Employee that the jurisdiction of this Office was at issue, based on his status as a term employee. I directed Employee to submit written argument in support of his position that OEA has jurisdiction of this appeal based on his status as a term employee; or, if Employee erred in identifying himself as a term employee, to so state and submit supporting documentation. The Order stated that the deadline for filing the response was October 11, 2013 and that unless the parties were notified to the contrary, the record would close at that time. The Order further stated that Employee's failure to respond could be considered as concurrence that the matter should be dismissed for lack of jurisdiction. Finally, the Order stated that Employee's failure to respond could also be deemed as a failure to prosecute his appeal which would provide another basis for dismissing the petition. The Order was mailed to Employee as the address listed in his petition as his mailing address by first class mail, postage prepaid, and was not returned by the U.S. Postal Service. Employee did not respond to the Order. The record closed on October 11, 2013.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Should this petition for appeal be dismissed?.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction. *See, e.g., Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992). This Office's jurisdiction was established by the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Official Code §1-601-01, *et seq.* (2001); and amended by the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions, of permanent employees. A term employee does not hold permanent status

Employees have the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). This burden must be met by a "preponderance of the evidence" which is defined in OEA Rule 629.1, *id.*, 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 did not submit any argument or evidence supporting his position that this Office had jurisdiction of this appeal based on his status as a term employee, although advised that he had the burden of proof on this jurisdictional issue. Employee was also cautioned that his failure to respond could be considered as concurrence that the matter should be dismissed for lack of jurisdiction. The Administrative Judge concludes that Employee failed to meet his burden of proof on the issue of jurisdiction and that the petition for appeal should therefore be dismissed.

OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) 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." OEA Rule 621.3(b) states that the failure of an employee to prosecute an appeal includes the failure to comply with an Order which contains a filing deadline. In this case, Employee was notified by Order dated September 23, 2013 that his failure to file his response by October 11, 2013, would provide an independent basis for the dismissal of the appeal. The Order was not returned by the U.S. Postal Service, and is presumed to have been received by Employee in a timely manner. Employee did not respond and did not request an extension of time. The Administrative Judge concludes that Employee's lack of diligence in pursuing this appeal constitutes a failure to prosecute; and she further concludes that this appeal should therefore be dismissed. *See e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010).

As discussed above, there are two independent bases to dismiss this petition for appeal. The Administrative Judge concludes that the petition should be dismissed.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge