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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
BERNIE WILLIAMS,)	
Employee)	OEA Matter No.: 1601-0091-12
)	
v.)	Date of Issuance: August 31, 2012
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	STEPHANIE N. HARRIS, Esq.
Agency)	Administrative Judge
)	

Bernie Williams, Employee *Pro-Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 17, 2012, Bernie Williams (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) action of terminating his employment pursuant to Title 5, § 1401.2: (h) falsification of official records; (i) dishonesty; and, (u) any other cause authorized by the laws of the District of Columbia. Agency asserts that Employee was terminated because “he knowingly and willfully failed to fully and accurately report his earnings from [DCPS] when he applied for and received unemployment insurance benefits,” thereby collecting benefits that he was not entitled to.¹ The effective date of Employee’s termination was April 28, 2012. Employee’s position of record at the time of his termination was an Educational Aide at Sharpe Health School. Employee was serving in Educational Service status at the time his position was abolished. On May 30, 2012, Agency filed an Answer to Employee’s appeal.

I was assigned this matter on May 29, 2012. On June 8, 2012, I ordered (“June 8th Order”) Employee to submit a brief addressing whether this matter should be dismissed for lack of jurisdiction because of Employee’s apparent resignation. Employee’s brief was due on or before June 19, 2012. Agency was given an option to file a brief on or before June 29, 2012. No response was received from Employee as directed by the June 8th Order. Accordingly, on July 11, 2012, I issued an Order for Statement of Good Cause (“July 11th Order”) wherein Employee was required to submit a statement explaining his failure to adhere to the deadline as was previously

¹ See Agency Answer, p. 1 (May 30, 2012).

prescribed. Moreover, Employee was also directed to submit his legal brief. Employee's response was due on or before July 23, 2012. As of the date of this decision, OEA has not received a response from Employee regarding the aforementioned Orders. Additionally, Agency has not submitted an optional brief in response to the June 8th Order. After reviewing the record, I have determined that there are no material facts in dispute and therefore a hearing is not warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

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.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

In his Petition for Appeal, Employee contends that he was unaware that unemployment benefits were being filed on his behalf. Subsequently, on May 2, 2012, Employee submitted a letter to the District of Columbia Office of Human Resources and OEA, stating that he was resigning from his position as an Educational Aide, effective immediately. Employee's statement of resignation raises a question as to whether OEA has jurisdiction over this 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 621.1, *id.*, the burden of proof is by a preponderance of the evidence which is defined as “[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.² Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.³ The issue of an Employee’s voluntary resignation has been adjudicated on numerous occasions by this Office. The law is well settled with this Office that there is a legal presumption that resignations are voluntary.⁴ Furthermore, OEA has consistently held that it lacks jurisdiction to adjudicate a voluntary resignation.⁵ However, a resignation where the decision to resign was involuntary, resulting from coercion or erroneous information being deliberately provided by Agency, is treated as a constructive removal and may be appealed to this Office.⁶

Here, Employee submitted a letter, dated May 2, 2012, which he asserts served as his formal notice of resignation from his position as an Educational Aide.⁷ There is no evidence in the record that suggests that Employee was coerced, deliberately misled, or given a mandate to resign. Based on the foregoing, I find that Employee’s retirement was voluntary. Thus, based on the record at hand, I conclude that Employee did not meet the burden of proof and that this matter must be dismissed for lack of jurisdiction.

Additionally, Employee’s failure to respond to the June 8th and July 11th Orders provides an additional basis to dismiss this petition. Both Orders advised Employee of the consequences for not responding. The Orders were sent by first class mail to the home address listed in the Petition for Appeal. The Orders were not returned to OEA and are therefore presumed to have been received by Employee. Further, Employee did not contact the undersigned to request an extension of time to file his response.

OEA Rule 621.3, 59 DCR 2129 (March 16, 2012), provides as follows:

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

³ See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

⁴ See *Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Keyes v. District of Columbia*, 372 F.3d 434 (D.C. Cir. 2004).

⁵ See *Matthew Adcock v. Metropolitan Police Department*, OEA Matter No. J-0068-04 (July 11, 2006); *Leroy Handy v. D.C. Department of Transportation*, OEA Matter No. J-0159-10 (June 16, 2010); *Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05R11 (March 20, 2012).

⁶ *Christie*, 518 F.2d at 587; *Keyes*, 372 F.3d at 439.

⁷ Employee Correspondence (May 4, 2012).

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. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure 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.

Specifically, OEA Rule 621.3(b) provides that the failure to prosecute an appeal includes the failure to submit required documents after being provided with a deadline for such submission.⁸ Employee's responses to the June 8th and July 11th Orders were required for a proper resolution of this matter on the merits. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, I conclude that Employee's failure to provide a required response and actively prosecute his appeal presents another reason for dismissal of this matter.

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

Stephanie N. Harris, Esq.
ADMINISTRATIVE JUDGE

⁸ See *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1224 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).