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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the matter of:)	
)	
TERA WATTERS)	OEA Matter No. 1601-0001-12
Employee)	
)	Date of Issuance: February 7, 2012
v.)	
)	Lois Hochhauser, Esq.
D.C. PUBLIC SCHOOLS)	Administrative Judge
Agency)	
_____)	

Tera Watters, Employee, *pro se*
Bobbie Hoye, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Tera Watters, Employee herein, filed this petition on October 14, 2011 with the Office of Employee Appeals (OEA), appealing the decision of the D.C. Public Schools, Agency herein, to terminate her employment as a teacher.

In the petition, Employee identified herself as a probationary employee who had been employed at Agency for four months. She attached the final notice of Agency stating that her position was “being terminated effective September 2, 2011.” In its Answer, filed on November 4, 2011, Agency argued that OEA lacks jurisdiction to hear this matter because Employee was not in permanent status at the time of her removal and because the petition was not filed in a timely manner. The certificate of service attached to the Answer states it was sent to Employee on November 4, 2011, at the address identified as her home address in her petition.

Following assignment of the matter to me on November 22, 2011, I issued an Order notifying Employee that the jurisdiction of this Office to hear her appeal had been challenged based on her status as a probationary at the time of her removal. I stated that employees have the burden of proof on issues of jurisdiction, and directed her to legal and/or factual argument regarding the jurisdiction of this Office by no later than December 13, 2011. I also stated that if Employee did not respond in a timely

manner, it could be assumed that she agreed that this Office lacked jurisdiction to hear this matter. Finally, I informed the parties that unless they were notified to the contrary, the record would close on that date. Finally, The Order was sent to Employee by first class mail, postage prepaid, to the address listed by Employee in her petition for appeal. It was not returned to OEA by the U.S. Postal Service. Employee did not respond to the Order and did not attempt to contact me. The record in this matter closed on December 13, 2011.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this matter be dismissed?

ANALYSIS AND CONCLUSION

Pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), Employee has the burden of proof on all issues of jurisdiction. Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 629.1, 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’s employment status, which is a basis for this Office’s jurisdiction, is an issue over which Employee has the burden of proof. Employee was given the opportunity to meet this burden of proof, but did not do so. *See*, OEA Rule 604.1, 46 D.C.Reg. 9299 (1999). Chapter 8, Section 814.3 of the District Personnel Manual provides that a termination during a probationary period cannot be appealed to this Office. An appeal to this Office by an employee serving in a probationary status must therefore be dismissed for lack of jurisdiction. *See, e.g., Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991) ___ D.C. Reg. _____. Employee’s failure to respond may be presumed, as stated in the Order, as an admission that this Office lacks jurisdiction of the appeal. In any event, I conclude that Employee did not meet her burden of proof on this issue of jurisdiction based on her status as a probationary employee.

Employee’s failure to respond to the Order provides an additional basis to dismiss this petition. In accordance with OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). In this matter, Employee failed to respond to the Order which contained specific deadlines and informed her of the consequences of not responding. The Order was sent to Employee at the address she 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 presumed delivered in a timely manner.

In sum, for the reasons stated herein, the Administrative Judge concludes that Employee failed to meet her burden of proof on the issue of jurisdiction based on her status as a probationary employee and also failed to prosecute her appeal; and that for these reasons petition should be dismissed¹

ORDER

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

FOR THE OFFICE:

LOIS HOCHHAUSER, Esq.
Administrative Judge

¹ Issues of timeliness and Employee's failure to submit certain required documents are not addressed in this Initial Decision. The Order directed Employee to address the issue of her status as a probationary employee. Since she was not asked to respond to these other issues, and since the petition is being dismissed on the issue that Employee was directed to address as well as failure to prosecute, those are the only two issues discussed herein.