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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DEON RAY)	
Employee)	OEA Matter No. 1601-0038-13
)	
v.)	Date of Issuance: May 14, 2014
)	
DISTRICT OF COLUMBIA)	Lois Hochhauser, Esq.
DEPARTMENT OF PUBLIC WORKS)	Administrative Judge
Agency)	
_____)	
Andrea Comentale, Esq., Agency Representative)	
Deon Ray, Employee <i>Pro-Se</i>)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 27, 2013, Deon Ray, Employee, filed a petition with the Office of Employee Appeals (OEA) appealing the decision of the District of Columbia Department of Public Works, Agency, to suspend him for ten days without pay from his position as a Sanitation Worker. The matter was assigned to this Administrative Judge on February 10, 2014.

Upon review of the file, the Administrative Judge noted that there was a timeliness issue. She therefore issued an Order on February 24, 2014, notifying Employee of this issue and directing him to respond by March 14, 2014. Employee was advised that timeliness is a jurisdictional issue and that employees have the burden of proof on all jurisdictional issues. Employee was further advised that his failure to submit a response could result in the imposition of sanctions, including the dismissal of the appeal. The Order was mailed to Employee at the address listed in his petition by first class mail, postage prepaid. Employee did not submit a response and did not contact the undersigned to request an extension of time to respond. The record is now closed.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this appeal be dismissed?

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), employees have the burden of proof on all issues of jurisdiction, including the timeliness of filing the petition. This burden must be met by a “preponderance of the evidence” which is defined in OEA Rule 628.2 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.”

Both this Office and the D.C. Court of Appeals have consistently held that time limits for filing appeals are mandatory in nature. *See, e.g., Alfred Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), citing *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991); and *Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010). DCMR §604.2 states that an employee must file the petition for appeal with OEA “**within** 30 calendar days of the effective date of the appealed agency action.” (emphasis added). In this matter, the final Agency notice stated that the effective date of the suspension was November 26, 2012. Therefore, Employee was required to file his petition with OEA by no later than December 26, 2012. Employee filed his appeal on December 27, 2012. Although the one day delay in filing is *de minimis*, timeliness is a jurisdictional issue and requires strict compliance unless good cause can be shown. Consistent with D.C. Official Code § 1-606.04(e), a late filing may be excused if an agency fails to provide an employee with “adequate notice of its decision and the right to contest the decision through an appeal”. *McLeod v. District of Columbia Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003). The final agency notice issued in this matter provided Employee with information regarding OEA appeal process, including the 30 day time limit. Employee failed to respond to the Order, therefore he did not offer any argument or extenuating circumstances which may have provided good cause to excuse the late filing. The Administrative Judge concludes that Employee failed to meet his burden of proof on this jurisdictional issue and that this petition therefore must be dismissed.

There is an additional basis for dismissing this petition. 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.” According to OEA Rule 621.3(b), failure of an employee to prosecute an appeal includes the failure to submit documents after being provided with a deadline for the submission. In this matter, an Order was issued on February 24, 2014, directing Employee to respond by March 14, 2014 or risk the imposition of sanctions, including the dismissal of petition. The Order was mailed to the address listed by Employee in his petition by first class

mail, postage prepaid. It was not returned to OEA, and is presumed to have been received by Employee in a timely manner. Employee did not submit a response or contact the undersigned to request an extension of time to respond. The Administrative Judge concludes that Employee's failure to respond to the Order constitutes a failure to prosecute his appeal. In an exercise of her discretion, she concludes that his failure to prosecute this matter provides another basis to dismiss this petition. *See e.g., 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).

For the reasons discussed above, the Administrative Judge concludes that the petition for appeal should be dismissed.

ORDER

It is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge