

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Brandon Dickens, Employee)	Matter No. J-0082-18
)	
v.)	Date of Issuance: November 5, 2018
)	
Office of the Superintendent of Education, Agency)	Senior Administrative Judge Joseph E. Lim, Esq.
)	
Hillary Hoffman-Peak, Esq., Agency Representative Brandon Dickens, Employee <i>pro se</i>)	

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On August 24, 2018, Brandon Dickens (Employee) filed a petition for appeal with this Office (“OEA”) from Agency's final decision designating his position as an Essential Employee.¹ This matter was assigned to me on September 7, 2018.

After Agency filed a motion to dismiss, I ordered Employee to submit a brief on jurisdiction by September 24, 2018. When Employee failed to do so, I ordered Employee to show good cause for his failure to respond to the order by November 2, 2018. Again, Employee failed to respond. Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee has failed to respond. Because this case could be decided on the basis of the documents of record as well as the parties’ verbal representations, no hearing was conducted. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this matter.

ISSUE

Whether this matter must be dismissed for lack of jurisdiction.

FACTS, ANALYSIS AND CONCLUSIONS

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), reads as follows: “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” According to OEA Rule 628.1, *id*, a party’s 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

¹ Essential employees are those that work with critical District government operations that cannot be suspended or interrupted, even in the event of declared emergencies or government closings. District Personnel Manual Issuance System E-DPM Instruction No. 12-51 (November 21, 2013).

untrue.” As will now be discussed, Employee has failed to meet his burden of proof as to the issue of jurisdiction.

This Office was established by the D.C. Comprehensive Merit Personnel Act (CMPA), D.C. Code Ann. § 1-601.1 *et seq.* (1999 repl.) and has only that jurisdiction conferred upon it by law. The types of actions that employees of the District of Columbia government may appeal to this Office are stated in D.C. Code Ann. § 1-606.3. Here, Employee is attempting to appeal Agency’s action formally designating him as an Essential Employee. Employee’s allegation is a grievance. As will now be discussed, this Office lacks jurisdiction over this appeal.

OEA’s authority was established by D.C. Official Code §1-606.03(a). It provides that:

“[a]n employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.”

Therefore, OEA can only consider adverse actions that result in removal, reductions-in- grade, suspensions of 10 days or more, or reductions-in-force.

Moreover, District Personnel Regulations and OEA Rule 604.1, 59 DCR 2129 (March 16, 2012), provide the following regarding OEA’s jurisdiction:

Except as otherwise provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01, *et seq.* (2006 Repl. & 2011 Supp.)) or §604.2 below, any District of Columbia government employee may appeal a final agency decision affecting:

- (a) A performance rating which results in removal of the employee;
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

Employee's grievance clearly falls outside the scope of this Office's jurisdiction. Because this Office does not have jurisdiction over the Employee's grievance, we cannot consider the merits of his claims. Thus, Agency's motion to dismiss is hereby granted and Employee's petition for appeal is dismissed.

In the alternate, OEA Rule 621.3 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. Failure of a party to prosecute or defend an appeal includes submitting required documents after being provided with a deadline for such submission. Here, Employee has failed to respond to the Jurisdiction Order and the Show Cause Order. Thus, I find that Employee's appeal shall be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction, and in the alternate, **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

Joseph Lim, Esq.
Senior Administrative Judge