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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

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| In the Matter of: |) | |
| ALAINA WOOD |) | OEA Matter No. 1601-0103-14 |
| Employee |) | |
| v. |) | Date of Issuance: January 28, 2015 |
| DISTRICT OF COLUMBIA PUBLIC SCHOOLS |) | Lois Hochhauser, Esq. |
| Agency |) | Administrative Judge |
| Sara White, Esq., Agency Representative |) | |
| Alaina Wood, Employee, <i>pro se</i> |) | |

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Alaina Wood, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on July 25, 2014, appealing the decision of the District of Columbia Public Schools, Agency herein, to remove her from her position as teacher, effective July 12, 2014. The matter was assigned to me on December 2, 2014.

In her petition, Employee identified her employment status as probationary. She stated that she was terminated because she was unable to complete required course work required in order to obtain a teaching license because of the birth of her child. As relief, she asked this Office to order that she be given additional time to complete the coursework and obtain her teaching license. Both the probationary status and reason for her termination raised jurisdictional issues. Therefore, on December 30, 2014, I issued an Order directing Employee to submit written argument in support of her position that this Office had jurisdiction to hear this appeal. The deadline for the submission was January 15, 2015. Employee was cautioned that her failure to timely comply with the Order could be considered as a failure to prosecute the matter, which could result in the dismissal of the petition without further notice. The parties were advised that if Employee did not file a timely response, or did not obtain an extension of time to file a response, the record in this matter would close on January 15, 2015. The Order was mailed to Employee by first class mail, postage prepaid, at the address listed by Employee in her petition. It was not returned as undelivered, and is presumed to have been received by Employee in a timely manner.

Employee did not file a response and did not seek an extension of time. The record in this matter closed on January 15, 2015.¹

¹ The December 30, 2014 Order provided that Agency would have until February 5, 2015 to respond to Employee's submission. However, since Employee did not file a response, there was no reason for Agency to respond.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should the petition be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

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.” Employee has the burden of proof on the issue of employment status, since it is a basis for this Office’s jurisdiction. In her petition, Employee stated that she was in probationary status.

Chapter 8, Section 814.3 of the District Personnel Manual states that a termination during the probationary period cannot be appealed to this Office. An appeal to this Office by a probationary employee 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). Employee was given the opportunity to establish that this Office had jurisdiction, despite this status. She did not do so. Therefore, she failed to meet her burden of proof on this jurisdictional issue. The Administrative Judge concludes that this matter should be dismissed since this Office lacks jurisdiction to hear appeals of employees in probationary status.

There is another jurisdictional issue that Employee was required to address. Employee did not dispute that she lacked the coursework required in order to obtain a teaching license. She did not dispute that a teaching license was a requirement for her position. She explained that she was unable to complete the coursework because of the birth of her child and asked for additional time to meet the requirements and obtain her teaching license. D.C. Official Code §1-606.03(a) states in pertinent part:

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...

Employee does not dispute that she lacked the requirements needed to teach, *i.e.*, a teaching license. She did not fault Agency for her failure to obtain her license, but explained she needed additional time to complete the requirements and obtain her teaching license because of the birth of her child. Thus even if Employee had been in permanent status, this Office would lack jurisdiction since Employee did not argue or establish that her termination was a result of an adverse action. Thus she did not meet her burden of proof on this jurisdictional issue. The Administrative Judge

Administrative Judge concludes that this provides another basis for dismissing this petition.

There is an additional basis for dismissing this matter. OEA Rule 621.3, 59 DCR 2129 (March 16, 2012) states 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 appeal. OEA Rule 621.3(b) provides that a party’s failure to comply with an Order by a stated deadline is a basis for establishing a failure to prosecute an appeal. In this matter, the December 30 Order directed Employee to file a response by January 15, 2015 or risk the imposition of sanctions, including the dismissal of petition. The Order was mailed to Employee at the address she listed in her 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. The Administrative Judge concludes that Employee’s failure to respond to the Order which contained a stated deadline, constitutes a failure to prosecute her appeal. The Administrative Judge, in an exercise of “sound discretion,” further concludes that this failure constitutes an additional basis to dismiss this matter. *See e.g., Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010).

In sum, for these reasons, the Administrative Judge concludes that Employee failed to meet her burden of proof on the issue of jurisdiction and failed to prosecute her appeal. Each basis provides an independent basis for dismissing the appeal. The Administrative Judge concludes therefore that this 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