

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Angelia Powell)	Matter No. J-0097-09
Employee)	
)	Date of Issuance:
v.)	August 10, 2009
)	
Office of Property Management)	Senior Administrative Judge
Agency)	Joseph E. Lim, Esq.
)	

Director Robin-Eve Jasper, Agency Representative
Angelia Powell, Employee pro se

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On March 9, 2009, Employee filed a petition for appeal with this Office from Agency's final decision suspending her from her position of Clerical Assistant for 30 days due to an on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations. The matter was assigned to the undersigned judge on July 10, 2009. Because there was a question as to whether this Office had jurisdiction over her appeal, I issued an Order directing Employee to submit a brief on jurisdiction by July 24, 2009.

Despite prior warnings that failure to comply could result in sanctions, including dismissal; Employee failed to make a submission. The record is closed.

JURISDICTION

Jurisdiction in this matter has not been established.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

ANALYSIS AND CONCLUSION

Based on the official documents submitted by Employee in her appeal, it appeared that this Office lacked jurisdiction over this matter. OEA Rule 629.2, 46 D.C. Reg. at 9317, reads as follows:

“The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.” According to OEA Rule 629.1, *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 untrue.”

Thus, I ordered Employee to submit a brief on jurisdiction by July 24, 2009. Employee has failed to do so or respond in any way. OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999) provides as follows:

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.

The employee was warned in each order that failure to comply could result in sanctions including dismissal. The employee never complied. Employee’s behavior constitutes a failure to prosecute her appeal and that is sound cause for dismissal.

ORDER

It is hereby ORDERED that the petition in this matter is dismissed for failure to prosecute.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge