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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JAMES BROOKS,)	
Employee)	OEA Matter No. 1601-0378-10
)	
v.)	Date of Issuance: November 15, 2011
)	
OFFICE OF THE STATE)	MONICA DOHNJI, Esq.
SUPERINTENDENT OF EDUCATION,)	Administrative Judge
Agency)	
_____)	
James Brooks, Employee <i>Pro Se</i>)	
W. Iris Barber, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 23, 2010, James Brooks (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“Agency”) decision to terminate his employment effective August 9, 2010, where he served as an Investigator. An initial review of Employee’s appeal indicated that this Office may not have jurisdiction over Employee’s appeal because per Agency’s Answer to Employee’s petition for appeal, Employee was an “at-will” employee at the time of his termination. Specifically, Agency’s Exhibit one (1)¹, signed by Employee, highlights the following, “...I understand that upon acceptance of this offer of reappointment I will be without tenure...” Therefore, on October 14, 2011, I issued an Order requiring Employee to address the issue of whether this Office had jurisdiction over his appeal. Employee was informed that he had the burden of proof regarding the issue of jurisdiction. Employee was further informed that failure to respond to the Order could result in his appeal being dismissed for failure to prosecute. Employee’s response was due by close of business on October 28, 2011. Employee did not respond by the October 28, 2011. Subsequently, on October 31, 2011, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of cause based on his failure to submit a response to the October 14, 2011, Order. Employee had until November 10,

¹ See Statement of Reappointment and of Obligations, dated February 20, 2008.

2011, to respond. Employee did not respond by the November 10, 2011, deadline and has not responded to date. This record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this petition for appeal should be dismissed.

ANALYSIS AND CONCLUSION

OEA Rule 622.3, 46 D.C. Reg. at 9313 (1999) provides as follow:

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.

Here, by failing to submit a response to the October 14, 2011, and October 31, 2011, Orders, Employee has failed to prosecute his appeal. I conclude that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Thus, this matter should be dismissed for his failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute his appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge