

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE)	OEA Matter No. 1601-0068-22
)	
v.)	Date of Issuance:
)	November 16, 2022
)	
D.C. PUBLIC SCHOOLS,)	JOSEPH LIM, ESQ.
Agency)	Senior Administrative Judge
)	
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Lynnette Collins, Esq., Agency Representative		
Employee <i>pro se</i>		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 26, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) final decision to remove her from her position as a Teacher due to two (2) years of Minimally Effective IMPACT ratings. Employee’s termination was effective on July 30, 2022. Due to OEA’s August 1, 2022, request, Agency supplied its answer to the petition on September 6, 2022.

I was assigned this matter on September 2, 2022. On September 6, 2022, Agency submitted a motion arguing that OEA lacked jurisdiction over Employee’s appeal. On September 26, 2022, I issued an order directing Employee to submit a brief addressing whether her appeal should be dismissed for lack of jurisdiction because her termination had been reversed on August 30, 2022. Employee never submitted a response, even after being issued a Show Cause Order. The record is now closed.

JURISDICTION

Jurisdiction has not been established in this matter.

ISSUE

Should Employee’s appeal be dismissed?

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

This Office’s jurisdiction is established pursuant to the District of Columbia’s Comprehensive Merit Personnel Act of 1978, D.C. Official Code § 1-601-01, *et seq.* (2001). OEA Rule 631.2 states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...”¹ Pursuant to OEA Rule 631.1, the burden of proof is defined under a “preponderance of the evidence” standard. Preponderance of the evidence means “[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.”

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) states in pertinent part that:

- (a) An 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 force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A 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.

Further, OEA Rule 604.1 provides that Employee has the burden of proof for establishing jurisdiction.² Pursuant to OEA Rule 604.1 this Office has jurisdiction in matters involving District government employees appealing 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.³

Pursuant to OEA Rule 604.3, and in accordance with § 2 of the Medical Marijuana Program Patient Employment Protection Amendment Act of 2020, effective April 27, 2021 (D.C. Law 23-276; D.C. Official Code §§ 1-606.03a and 1-615.03a), this Office also has jurisdiction involving any District of Columbia government employee who appeals a final agency decision affecting a designation of the employee’s position as safety-sensitive if:

- A) The employee is in a position designated as safety-sensitive as of the effective date of the Medical Marijuana Program Patient Employment Protection Amendment Act, effective April 27, 2021 (D.C. Law 23-276; D.C. Official Code § 1-615.03a);

¹68 DCR 012473 (2021).

² OEA Rules 604.1, 68 DCR 012473 (December 27, 2021).

³ *Id.*

- B) Within forty-five (45) business days after the employee receives the notification of rights;
- C) Within forty-five (45) business days after an employee becomes a qualifying patient; or
- D) Within forty-five (45) business days after the employee receives notice that the employee's position will be newly designated as safety-sensitive.

Accordingly, I find that Employee has not established the jurisdiction of this Office over her appeal.

In the alternate, and in accordance with OEA Rule 624.3, 6-B DCMR Ch. 600, et seq. (2021), this Office has long maintained that a Petition for Appeal may be dismissed when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to all Orders dated September 26, 2022, and November 2, 2022, that I issued. The Orders had specific time frames and contained warnings that failures to comply could result in penalties, including the dismissal of the petition. The Orders were sent to Employee at the address she listed as her home address in her Petition for Appeal. They were sent by first class mail, postage prepaid and were not returned. They are presumed to have been delivered in a timely manner.⁴ .

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:

s/Joseph Lim
JOSEPH E. LIM, Esq.
Senior Administrative Judge

⁴ *Prater v. MPD*, OEA Matter No. 1601-0135-03, *Opinion and Order on Petition for Review* (November 28, 2006), and *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1233 (1985).