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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
|---|---|---------------------------------|
| _____ |) | |
| In the Matter of: |) | |
| |) | |
| ERIC HILL |) | OEA Matter No. 1601-0055-08 |
| Employee |) | |
| |) | Date of Issuance: July 16, 2008 |
| v. |) | |
| |) | Lois Hochhauser, Esq. |
| DISTRICT OF COLUMBIA PUBLIC SCHOOLS |) | Administrative Judge |
| Agency |) | |
| _____ |) | |
| Eric Hill, Employee |) | |
| Sara White, Esq., Agency Representative |) | |

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition with the Office of Employee Appeals (OEA) on March 12, 2008, appealing Agency's decision to suspend him for ten days without pay, beginning March 31, 2008. At the time the petition was filed, Employee was in permanent career status.

This matter was assigned to me on May 30, 2008. Employee stated in the petition that prior to filing the appeal with this Office, he had filed a grievance involving the same adverse action pursuant to a collective bargaining agreement. On June 3, 2008, I issued an Order directing Employee to present legal and/or factual argument regarding this Office's jurisdiction by June 23, 2008. The parties were notified that unless they were advised to the contrary, the record in this matter would close on June 23, 2008. Employee did not respond to the Order and the record closed on June 23, 2008.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition for appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

In his petition, Employee states that he filed a grievance regarding this suspension pursuant to the terms of a collective bargaining agreement between his exclusive bargaining representative and Agency on March 10, 2008, two days before he filed the appeal now before OEA.

This Office's jurisdiction is conferred upon it by law. It is governed in this matter by D.C. Office Code (2001) Section 1-616.52 which states in pertinent part:

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter [providing appeal rights to OEA] for employees in a bargaining unit represented by a labor organization.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to Section 1-606.03, or the negotiated grievance procedure, **but not both.** (emphasis added).

(f) An employee shall be deemed to have exercised their option (*sic*) pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, **whichever occurs first.**(emphasis added).

Employee elected to grieve the matter through the collective bargaining agreement before filing the appeal with OEA. His appeal rights to OEA were contained in the final Agency notice, and he does not contend he was unaware of those rights.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, as that "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". Based on the reasons stated herein, the Administrative Judge concludes that Employee failed to meet his burden of proof on the issue of jurisdiction.

In addition, this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. Pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), failure to prosecute includes failure to "[s]ubmit required documents after being provided with a deadline for such submission." *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee failed to respond to the June 3, 2008 Order although he was provided with a deadline. He did not request an extension of time to file his response. Employee's failure to prosecute this appeal provides an additional ground for dismissing the petition.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge